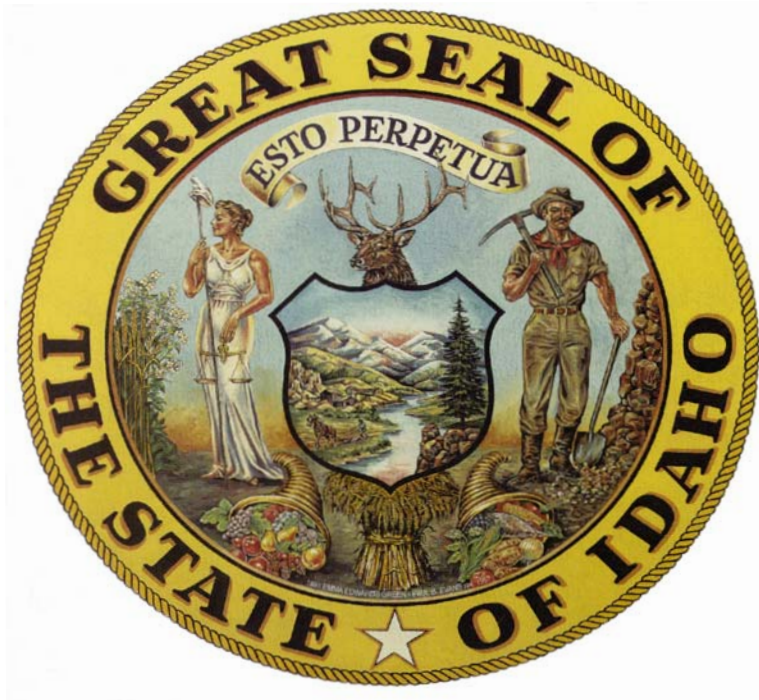


# IDAHO ADMINISTRATIVE BULLETIN

August 3, 2011 -- Volume 11-8

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# IDAHO ADMINISTRATIVE BULLETIN

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# Preface

The Idaho Administrative Bulletin is a monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho that are statutorily required to be published in the Bulletin. All official rulemaking notices, official rule text, executive orders of the Governor, all legislative documents affecting rules, and other such documents an agency may want promulgated through the Bulletin.

State agencies are required to provide public notice of all proposed rulemaking actions and must invite public input once formal rulemaking procedures have been initiated. The public receives notice that an agency has initiated formal rulemaking procedures through the Idaho Administrative Bulletin and a Public Notice of Intent (legal notice) that publishes in specific newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties can submit written comments to the agency or request public hearings of the agency if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual "Notice of Rulemaking" for each proposed rule that is published in the Bulletin. After the comment period closes, the agency considers fully all information submitted regarding the proposed rule. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

## CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin **09-1** refers to the first Bulletin issued in calendar year **2009**; Bulletin **10-1** refers to the first Bulletin issued in calendar year **2010**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **10-1** refers to January 2010; Volume No. **10-2** refers to February 2010; and so forth. Example: The Bulletin published in January 2010 is cited as Volume **10-1**. The December 2009 Bulletin is cited as Volume **09-12**.

## 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 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 only published in the Bulletin and **not** printed in the Administrative Code.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, the reader should refer to the **Cumulative Rulemaking Index** that can be accessed through the Administrative Rules homepage at [adminrules.idaho.gov](http://adminrules.idaho.gov).

## THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho's administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate all five of these actions. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the 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 the 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 consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a “Notice of Intent to Promulgate - Negotiated Rulemaking” in the Administrative Bulletin by the agency is optional. This process normally results in the formulation of a proposed and the initiation of formal rulemaking procedures but the result may also be that formal rulemaking is not initiated and no further action is taken by the agency. The rulemaking effectively stops before it gets started.

## **PROPOSED RULEMAKING**

A proposed rulemaking is an action by an agency wherein 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 Rulemaking - Proposed Rule” in the Bulletin. This notice must include:

- a) the specific statutory authority (from Idaho Code) 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) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.
- d) the text of the proposed rule prepared in legislative format;
- e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- f) 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;
- g) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- h) the deadline for public (written) comments on the proposed rule.

Any proposed rulemaking that is submitted for publication in the Bulletin that would impose a fee or charge must be accompanied by a cost/benefit analysis that is prepared by the agency. This cost/benefit analysis must estimate, as reasonably as possible, the costs to the agency to implement the rule and the estimated costs that would be borne by citizens or the private sector. This analysis is filed with the Director of LSO who then forwards it to the appropriate germane joint subcommittee assigned to review the promulgating agency’s proposed rules.

When incorporating by reference, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference any additional materials into the rule. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can be accessed on a website or post this information on its own website, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s website.

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, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the Bulletin officially stops the formal rulemaking process.

## **TEMPORARY RULEMAKING**

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

- a) 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 one or more of the above legal criteria and the governor finds it is necessary that a rule become effective before it has been submitted to the legislature for review and approval and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows that agency to make a temporary rule immediately effective upon adoption. However, a temporary rule that imposes a fee or charge may be adopted only if the governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

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

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, will rescind the temporary rule.

## **PENDING RULEMAKING**

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures 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 Rulemaking Pending Rule." This includes:

- a) a statement giving 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 a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become



effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

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 change 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 Rulemaking" is published.

### **FINAL RULEMAKING**

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

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 an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule reviewed by the legislature and not rejected, amended or modified becomes 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 that is final and effective may be applied retroactively, as provided in the rule.

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

**Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: [adminrules.idaho.gov](http://adminrules.idaho.gov)

### **SUBSCRIPTIONS AND DISTRIBUTION**

For subscription information and costs, 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 Idaho Administrative Code** - annual subscription on CD-ROM. The Code is an annual compilation of all final administrative rules and all enforceable temporary rules and also includes all executive orders of the Governor that have published in the Bulletin, all legislative documents affecting rules, a table of contents, reference guides, and a subject index.

**The Idaho Administrative Bulletin** - annual subscription available on individual CD-ROM sent out monthly. The Bulletin is an official monthly publication of the State of Idaho and is available for purchase on CD-ROM only. Yearly subscriptions or individual CD-ROM's are available for purchase.

**Internet Access** - The Administrative Code and Administrative Bulletin, and many other rules-related documents are available on the Internet at the following address: [adminrules.idaho.gov](http://adminrules.idaho.gov)

## 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 38.05.01.200.02.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.

“**38.**” refers to the Idaho Department of Administration

“**05.**” refers to Title **05**, which is the Department of Administrations’s Division of Purchasing

“**01.**” refers to Chapter **01** of Title 05, “Rules of the Division of Purchasing”

“**200.**” refers to Major Section **200**, “Content of the Invitation to Bid”

“**02.**” refers to Subsection 200.**02**.

“**c.**” refers to Subsection 200.02.**c**.

“**ii.**” refers to Subsection 200.02.c.**ii**.

## 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 “-”, (**38-0501-1001**). 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 number:

### **“DOCKET NO. 38-0501-1001”**

“**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**).

“**1001**” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2010**. A subsequent rulemaking on this same rule chapter in calendar year 2010 would be designated as “**1002**”. The docket number in this scenario would be 38-0501-**1002**.

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 of a rule that is part of the same rule, a typical internal citation may appear as follows:

**“...as found in Section 201 of these rules.” OR “...in accordance with Subsection 201.06.c. of these rules.”**

The citation may also include the IDAPA, Title, or Chapter number, 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 rule.

**“01”** denotes the Chapter number of the rule.

**“201”** denotes the main Section number of the rule to which the citation refers.

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 2011**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
11-1	January 2011	<b>*November 19, 2010</b>	January 5, 2011	January 26, 2011
11-2	February 2011	January 14, 2011	February 2, 2011	February 23, 2011
11-3	March 2011	February 11, 2011	March 2, 2011	March 23, 2011
11-4	April 2011	March 11, 2011	April 6, 2011	April 27, 2011
11-5	May 2011	April 8, 2011	May 4, 2011	May 25, 2011
11-6	June 2011	May 13, 2011	June 1, 2011	June 22, 2011
11-7	July 2011	June 10, 2011	July 6, 2011	July 27, 2011
11-8	August 2011	July 8, 2011	August 3, 2011	August 24, 2011
11-9	September 2011	August 5, 2011	September 7, 2011	September 28, 2011
11-10	October 2011	<b>**August 31, 2011</b>	October 5, 2011	October 26, 2011
11-11	November 2011	October 7, 2011	November 2, 2011	November 23, 2011
11-12	December 2011	November 4, 2011	December 7, 2011	December 28, 2011

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2012**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
12-1	January 2012	<b>*November 25, 2011</b>	January 4, 2012	January 25, 2012
12-2	February 2012	January 13, 2012	February 1, 2012	February 22, 2012
12-3	March 2012	February 10, 2012	March 7, 2012	March 28, 2012
12-4	April 2012	March 9, 2012	April 4, 2012	April 25, 2012
12-5	May 2012	April 6, 2012	May 2, 2012	May 23, 2012
12-6	June 2012	May 4, 2012	June 6, 2012	June 27, 2012
12-7	July 2012	June 8, 2012	July 4, 2012	July 25, 2012
12-8	August 2012	July 6, 2012	August 1, 2012	August 22, 2012
12-9	September 2012	August 3, 2012	September 5, 2012	September 28, 2012
12-10	October 2012	<b>**August 31, 2012</b>	October 3, 2012	October 24, 2012
12-11	November 2012	October 5, 2012	November 7, 2012	November 28, 2012
12-12	December 2012	November 2, 2012	December 5, 2012	December 26, 2012

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

***\*\*Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 01</b>	<b>Accountancy</b> , Board of
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<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>
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<b>IDAPA 57</b>	<b>Sexual Offender Classification Board</b>
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## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1101

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 71-111, 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

To incorporate by reference the 2012 edition of the National Institute of Standard and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices. NIST documents are available online at <http://www.nist.gov/pml/wmd/index.cfm>.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The reason to update this reference document is to maintain uniformity throughout western state jurisdictions.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kevin Merritt, Section Manager at (208)332-8692.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2011.

DATED this 25th day of June, 2011.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
PO Box 790  
Boise, ID 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0214-1101**

**004. INCORPORATION BY REFERENCE.**

**01. Required Reference Materials.** The 201~~1~~<sup>2</sup> edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. (4-7-11)(      )

**02. Required Reference Materials for Checking Prepackaged Commodities.** The 4th Edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, "Checking the Net Contents of Packaged Goods," hereby incorporated by reference, shall be the authority in checking packaged commodities, unless otherwise stated in these rules. (2-13-04)

**03. Specifications for Diesel Fuel and Biodiesel Fuel.** American Society of Testing and Materials (ASTM) D975-07a, "Standard Specification for Diesel Fuel Oils," and ASTM D6751-07a, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," intended for blending with diesel fuel are hereby incorporated by reference and are the specifications for diesel fuel and biodiesel fuel blend stock (B100 biodiesel). (4-2-08)

**04. Specifications for Gasoline.** American Society of Testing and Materials (ASTM) D 4814-07a, "Standard Specification for Automotive Spark-Ignition Engine Fuel", dated October 17, 2007, is hereby incorporated by reference and is the specification for gasoline. (5-8-09)

**05. Local Availability.** Copies of the incorporated documents are on file with the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712. Copies of NIST documents may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. [Copies are available for downloading on the internet.](#) Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from [ASTM International](#), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428. (4-7-11)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.03.03 - RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-1101

#### 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 22-3421, 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current rule requires professional applicators to be physically on site during the entire pesticide application. Many chemigation applications take more than two days to complete. This change will allow professional applicators to begin the chemigation application and then return at least once every four hours to check on the application. This rule change was recommended by the Pesticide Licensing Advisory Committee.

**IDAHO CODE SECTION 22-101A STATEMENT:** This rule does not regulate an activity not already regulated by the federal government. The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") governs the registration and use of pesticides. Under FIFRA, states also have enforcement authority for pesticides: "A State may regulate the sale or use of a federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by" FIFRA. 7 U.S.C. § 136v. Under FIFRA, it is unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." 7 U.S.C. § 136j(a)(2)(G). Under Idaho law, no person shall "[u]se a pesticide in a manner inconsistent with its labeling except as provided by rule." Idaho Code § 22-3420(1). Therefore, pursuant to federal and state law, applicators must follow the requirements on a pesticide label. The majority of pesticide labels allow a certified applicator to leave a chemigation site while the application is in progress. The proposed rule will allow a certified professional applicator to leave the chemigation site while the application is in progress, but they must return at least once every four hours to check on the application. This requirement is more stringent than some label requirements.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted, because an informal meeting was held with the Idaho Pesticide Licensing Advisory Committee on March 11, 2011 to discuss and revise the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact George Robinson at (208) 332-8531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 29th day of June, 2011.

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road

P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0303-1101**

**100. LICENSING PROFESSIONAL APPLICATORS AND PESTICIDE DEALERS.**

**01. Demonstration of Competence. (3-20-97)**

**a.** Professional applicators shall not recommend the application or make an application of any pesticide for any purpose, unless they have demonstrated competence for that purpose, which competence must be demonstrated by passing Department examinations and becoming licensed in the appropriate categories listed in Subsection 100.02. (3-20-97)

**b.** An applicant shall demonstrate competency in the following areas: (3-20-97)

i. Labels and labeling, including terminology, instructions, format, warnings and symbols. (3-20-97)

ii. Safety factors and procedures, including protective clothing and equipment, first aid, toxicity, symptoms of poisoning, storage, handling, transportation and disposal. (3-20-97)

iii. Laws, rules, and regulations governing pesticides. (3-20-97)

iv. Environmental considerations, including the effect of climate and physical or geographical factors on pesticides, and the effects of pesticides on the environment, and the animals and plants living in it. (3-20-97)

v. Mixing and loading, including interpretation of labels, safety precautions, compatibility of mixtures, and protection of the environment. (3-20-97)

vi. Methods of use or application, including types of equipment, calibration, application techniques, and prevention of drift and other types of pesticide migration. (3-20-97)

vii. Pests to be controlled, including identification, damage characteristics, biology and habitat. (3-20-97)

viii. Types of pesticides, including formulations, mode of action, toxicity, persistence, and hazards of use. (3-20-97)

ix. Chemigation practices involving the application of chemicals through irrigation systems, calibration, management, and equipment requirements. (4-5-00)

x. For use of the Livestock Protection Collar (LPC), in addition to the requirements of Subsection 100.01.b.i. through 100.01.b.viii., professional applicators shall have training in and knowledge of the following: (3-19-99)

(1) Characteristics and habits of predatory animals, and particularly, coyotes. (3-19-99)

(2) Properties of the collars and of Sodium Fluoroacetate (Compound 1080). (3-19-99)

(3) Recordkeeping requirements set forth in Subsection 150.01 that will additionally include a record of each animal found poisoned or suspected of having been poisoned as a result of the use of Compound 1080, including target and non-target species. (3-19-99)

(4) The requirement for immediate reporting of suspected poisonings of non-target species and suspected poisonings of humans or domestic animals by the use of Compound 1080 to the United States Environmental Protection Agency (US EPA) and the Idaho State Department of Agriculture (ISDA). (3-19-99)

- (5) How to properly dispose of animal remains, vegetation, or soil contaminated by a punctured LPC. (3-19-99)
- (6) Practical treatment of Compound 1080 poisonings in humans and domestic animals. (3-19-99)
- (7) Safe handling, attachment, and storage of LPC collars. (3-19-99)
- (8) The requirement to post and maintain bilingual (English/Spanish or other second language appropriate for the region) signs at logical points of access to areas where LPCs are in use. (3-19-99)
- (9) The requirement to perform inspections once every week to ensure that collars in use are accounted for, property positioned, and intact. (3-19-99)
- (10) Knowledge of alternative controls of predation. (4-5-00)
- xi. For use of the LPC, in addition to the requirements of Subsections 100.01.b.i. through 100.01.b.x., professional applicators shall have training in and the ability to: (3-19-99)
  - (1) Recognize potential hazards to humans, domestic animals, and non-target wildlife from the use of the LPC. (3-19-99)
  - (2) Read and understand the labeling specific to the LPC. (3-19-99)
  - (3) Recognize general symptoms of poisoning by Compound 1080 in humans and domestic animals and take appropriate action. (3-19-99)
  - (4) Recognize where the LPC can be used safely and effectively and, conversely, where alternative methods of control would be more appropriate. (3-19-99)
  - (5) Assess damaged LPCs to determine which can be repaired and which must be disposed of properly. (3-19-99)
  - (6) Properly dispose of the LPCs. (3-19-99)
- 02. Certification.** A person shall be certified by passing Department examinations with a minimum of seventy percent (70%) in the applicable pesticide categories. (5-8-09)
  - a.** Professional applicators shall be certified and licensed in one (1) or more of the following categories: (3-20-97)
    - i. Law and Safety (LS). This shall include general knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling, and laws. Certification in this category is required when certifying in Subsections 100.02.a.ii. through 100.02.a.ix. (3-20-97)
    - ii. Agriculture. For persons conducting field crop applications. Agriculture Herbicide (AH). Certification in this category shall also certify a person to make herbicide applications in rights-of-way, forests, and rangelands. Agriculture Insecticide/Fungicide (AI). Certification in this category shall also certify a person to make insecticide/fungicide applications in rights-of-way, forests, and rangelands. Soil Fumigation (SF). (4-5-00)
    - iii. Forest Environment (FE). For U.S. Forest Service and Bureau of Land Management personnel, contractors, and private industry personnel who control pests in forests and on rangelands. (3-20-97)
    - iv. Right-of-Way Herbicide (RW). For railroads, highway departments and others, for roadside weed control, soil sterilant herbicides, and weed control on public lands (non-crop). Certification in the Agricultural Herbicide category shall exempt the applicant from the need to certify in this category. (3-20-97)
    - v. Public Health Pest (PH). For abatement districts and others controlling mosquitoes and other public

- health pests. (3-20-97)
- vi. Livestock Pest Control (LP). For persons treating livestock pests. (3-20-97)
  - vii. Ornamental Herbicide (OH). For persons conducting outside urban or residential herbicide applications, with the exception of soil sterilant applications (see Subsection 100.02.a.iv.). Ornamental Insecticide/Fungicide (OI). For persons doing outside urban or residential insecticide and fungicide applications, including exterior applications to residential, urban or commercial buildings, excluding structural destroying pests (see Subsection 100.02.a.ix.). (4-5-00)
  - viii. General Pest Control Operations (GP). For persons controlling pests in and around residential, commercial, or other buildings, excluding structural destroying pests. (3-20-97)
  - ix. Structural Destroying Pest (SP). For persons involved in the control of pests which destroy wooden structures, such as bridges, houses, offices, and warehouses. (3-20-97)
  - x. General Vertebrate Control (GV). For Wildlife Services (WS) personnel of the United States Department of Agriculture-Animal and Plant Health Inspection Service, for controlling vertebrates such as rodents, predators, and birds. (4-5-00)
  - xi. Rodent Control (RC). For rodent districts and others, for the control of field rodents. Certification in the General Pest Control category shall exempt the applicant from the need to certify in this category. (3-20-97)
  - xii. Aquatic Weed and Pest Control (AW). For irrigation districts, canal companies and others, for weed and pest control on aquatic sites. (4-5-00)
  - xiii. Seed Treatment (ST). For persons doing treatments to protect seeds used for plant reproduction. (3-20-97)
  - xiv. Commodity Pest Control (CP). For persons controlling pests in stored commodities. (3-20-97)
  - xv. Potato Cellar Pest Control (PC). For persons who apply sprout inhibitors in potato cellars. (3-20-97)
  - xvi. Wood Preservative (WP). For persons who apply wood preservatives. (3-20-97)
  - xvii. Pest Control Consultant-Statewide (SW). For persons who make recommendations or supply technical advice concerning the use of any pesticide for agricultural purposes. (3-20-97)
  - xviii. Demonstration and Research (DR). For persons who apply or supervise the use of restricted use pesticides at no charge to demonstrate the action of the pesticide or conduct research with restricted use pesticides. A person shall be eligible to license in this category by passing the Pest Control Consultant examination. (3-20-97)
  - xix. Chemigation (CH). For persons who apply chemicals through an irrigation system, excluding Aquatic Weed and Pest Control applicators (see Subsection 100.02.xii.). (4-5-00)
  - xx. Livestock Protection Collars (LPC). For use of Livestock Protection Collars (LPC) containing the restricted use pesticide Compound 1080 to control predatory coyotes. (3-19-99)
- b.** Pesticide Dealers shall be certified and licensed in any category listed in Subsection 100.02 that pertains to the types of restricted use pesticides sold or distributed. (3-23-98)
  - c.** Persons with an active license category on June 30, 1996, shall retain said category under the rules which became effective on July 1, 1996, until the expiration of the certification period or suspension of the license by the Department. (3-23-98)
  - d.** Mixer-Loaders. Effective December 31, 1998, mixer-loader licenses issued by the Department shall

expire. No person shall act as a mixer-loader for a professional applicator without first obtaining annual training. (3-23-98)

i. Training shall be conducted and certified by the professional applicator who employs the mixer-loader. Certification of training shall be on a form prescribed by the Department and must include the signatures of both the mixer-loader and the professional applicator providing the training. (3-23-98)

ii. Training shall include areas relevant to the pesticide mixing and loading operation and instruction on the interpretation of pesticide labels, safety precautions, first aid, compatibility of mixtures, and protection of the environment. (3-23-98)

iii. Employers of mixer-loaders shall comply with federal and state laws related to hazardous occupations and shall provide and ensure the use of personal protective equipment required in the label directions. (3-23-98)

**03. Department Examination Procedures. (3-20-97)**

a. Examinations shall be administered by a designated agent. (3-20-97)

b. To pass a Department examination, professional applicators and pesticide dealers shall obtain a score of seventy percent (70%) or higher. (3-23-98)

c. Payment of examination fees shall be received by the Idaho Department of Agriculture before examination results may be released. (3-20-97)

d. A minimum waiting period of one (1) week shall be required before an applicant may retake an examination. (4-6-05)

**04. Licensing Periods and Recertification.** Beginning August 31, 2000, Pesticide Dealer licenses shall expire on August 31, of even numbered years and have a twenty-four (24) month duration. A Pesticide Dealer License application form shall accompany each new license or license renewal request. Professional applicator licenses shall be renewed by satisfying the recertification provisions of this section. Licenses belonging to professional applicators with last names beginning with A through L, inclusive, shall expire on the last day of the year in every odd-numbered year, and licenses belonging to professional applicators with last names beginning with M through Z, inclusive, shall expire on the last day of the year in every even-numbered year. Any professional applicator with less than thirteen (13) months in the licensing period shall not be required to obtain recertification credits during the initial licensing period. The recertification period for professional applicators shall be concurrent with their two (2) year licensing period. Recertification requirements may be accomplished by complying with either Subsection 100.04.a. or 100.04.b. (4-5-00)

a. A person shall accumulate recertification credits by attending Department-accredited pesticide instruction seminars. (3-20-97)

i. A minimum of fifteen (15) credits shall be earned by a professional applicator during each recertification period. (3-23-98)

ii. A completed request for accreditation of a seminar shall be received by the Department not less than thirty (30) days prior to the scheduled seminar. Such a request shall be submitted on a form prescribed by the Department. Under exceptional circumstances, as described in writing by the person requesting accreditation, the thirty (30) day requirement may be waived. (3-20-97)

iii. Credit will be given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.01.b. No credit will be given for training given to persons to prepare them for initial certification. (3-20-97)

iv. The number of credits assigned in advance for a seminar, or a part of a seminar, shall be tentative, and may be revised by the Department if it is later found that the training does not comply with Subsection

100.04.a.iii. (3-20-97)

v. Effective July 1, 1998, a recertification credit shall be based upon one (1) credit for each one (1) hour of instruction, as described in Subsection 100.04.a.iii. Should an applicator's recertification period include credits earned prior to July 1, 1998, those credits based on one hundred fifty (150) minutes of instruction shall be converted to three (3) credits for recertification purposes. (3-23-98)

vi. Verification of attendance at a seminar shall be accomplished by validating the attendee's pesticide license, using a stamp, sticker, or other method approved by the Department. A designated agent shall ensure that such attendance records are properly completed. Verification of attendance must be submitted with the license renewal application. (3-20-97)

vii. If a person has accumulated more than fifteen (15) credits during the recertification period, the excess credits may not be carried over to the next recertification period. (3-23-98)

viii. Upon earning the recertification credits as described above, a person shall be considered by the Department to be recertified for the next recertification period corresponding with the next issuance of a license. (3-20-97)

**b.** A person shall pass the Department's recertification examinations for all categories in which a person intends to license. (3-20-97)

i. Recertification examinations may be taken by a professional applicator beginning the thirteenth month of the recertification period. (3-23-98)

ii. The examination procedures as outlined in Subsection 100.03 shall be followed. (3-23-98)

iii. In addition to examinations for categories listed under Subsections 100.02.a.ii. through 100.02.a.ix., a person must also pass a Law and Safety recertification examination. (3-23-98)

iv. Recertification shall not be achieved by passing an entry-level examination. (3-20-97)

v. Upon passing the recertification examination(s), a person shall be considered by the Department to be recertified for the next recertification period. (3-20-97)

**c.** Any person who fails to accumulate the required recertification credits prior to the expiration date of their license shall be required to pass the appropriate recertification examination(s) before being licensed. (3-20-97)

**05. Licensed Professional Applicator.** Only a licensed professional applicator shall operate or supervise the operation of commercial application equipment by being present during the time of operation. Licensed professional applicators that start the application of chemicals through chemigation equipment do not have to be present during the entire application, but must return to monitor the proper application at least once every four (4) hours for the duration of the application. (~~3-20-97~~)(    )

**06. Interim Exemption from Pesticide Dealer Licensing and Recordkeeping.** Until such time as the director promulgates specific rules pertaining to distribution of general use pesticides (GUPs), persons selling only GUPs shall not be required to obtain a pesticide dealer license or maintain distribution records of these products. (3-30-01)



## IDAPA 08 - STATE DEPARTMENT OF EDUCATION

### 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1101

### 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 33-1511(2), 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

In May of 2010 the National Congress on School Transportation (National Standards) enacted changes affecting Idaho's school transportation program. Significant discussion related to school transportation in Idaho continues following operations and funding changes enacted during the 2010 legislative session. Recent changes enacted at the 2010 National Standards call for a response by the State Department of Education's Division of School Transportation. Consequently, the Department engaged in rulemaking related to school transportation in Idaho. A summary of the changes to the Standards for Idaho School Buses and Operations (SISBO) manual, which is incorporated by reference, include changes to the school bus construction standards, changes to a driver's qualifications, changes to school transportation operations at the local level, changes to reimbursements, and changes have also been made in the student transportation matrix to reflect the changes made in the manual.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There is no imposed or increased fee associated with these changes to the SISBO manual.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: These changes result in no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because Idaho has a Student Transportation Steering Committee of transportation representatives from all regions of Idaho. Changes were vetted by the Student Transportation Steering Committee and forwarded to Negotiated Rulemaking for approval.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Section 33-1511(2), Idaho Code, allows the State Department of Education to "adopt, publish and distribute, and from time to time as need therefore arises amend, minimum standards for the construction of school buses, the basis of which standards shall be those incorporated in the latest report of the National Conference on School Transportation, which report shall be filed with the Idaho State Police." Due to the manual's length and the fact that changes are regularly required, incorporation by reference is a practical method of making alterations. The SISBO manual can be found on the State Department of Education's website at: <http://www.sde.idaho.gov/site/transportation/>.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brad Jensen, Director of Transportation, at the address listed below or email him at [kbjensen@sde.idaho.edu](mailto:kbjensen@sde.idaho.edu).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 8th day of July, 2011.

Tom Luna  
Idaho Superintendent of Public Instruction  
State Department of Education  
650 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0027  
208-332-6800 phone - 208-334-2228 fax

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1101**

**004. INCORPORATION BY REFERENCE.**

The State Board of Education adopts and incorporates by reference into its rules: (5-8-09)

**01. Idaho Standards for the Initial Certification of Professional School Personnel as approved on November 17, 2010.** Copies of this document can be found on the Office of the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-7-11)

**02. Standards for Idaho School Buses and Operations as approved on ~~November 7, 2008~~ June 23, 2011.** The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise Idaho, 83702 and can also be accessed electronically at <http://www.sde.idaho.gov/site/transportation/library.htm>. (~~4-7-11~~)( )

**03. Operating Procedures for Idaho Public Driver Education Programs as approved on November 17, 2010.** The Operating Procedures for Idaho Public Driver Education Programs are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702 and can also be accessed electronically at [http://www.sde.idaho.gov/site/driver\\_edu/forms\\_curriculum.htm](http://www.sde.idaho.gov/site/driver_edu/forms_curriculum.htm). (4-7-11)

**IDAPA 08 - STATE BOARD OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1102**

**NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 33-105, 33-107, and 33-1627 Idaho Code.

**MEETING SCHEDULE:** Public meetings on the negotiated rulemaking will be held as follows:

**IDAHO FALLS**

**Tuesday, August 9th, 2011, 4:00 pm-8:00 pm**

University Place  
Center for Higher Education (CHE), Room 211  
Science Center Drive  
Idaho Falls, Idaho

**POCATELLO**

**Wednesday, August 10th, 2011, 4:00 pm-8:00 pm**

Idaho State University  
Rendezvous, Room 111  
921 S. 8th Avenue  
Pocatello, ID

**COEUR d'ALENE**

**Monday, August 15th, 2011, 4:00 pm-8:00 pm**

North Idaho College  
Meyer Health Bldg., Room 102  
1000 W. Garden Ave.  
Coeur d'Alene, ID

**MOSCOW**

**Tuesday, August 16th, 2011, 4:00 pm-8:00 pm**

University of Idaho  
Student Union Bldg., Borah Theatre  
Moscow, ID

**WESTERN TREASURE VALLEY**

**Wednesday, August 17th, 2011, 4:00 pm-8:00 pm**

Fruitland High School  
501 Iowa Ave  
Fruitland, ID

**BOISE - NAMPA**  
**Thursday, August 18th, 2011, 4:00 pm-8:00 pm**

**College of Western Idaho**  
**5500 East Opportunity Drive**  
**Nampa, Idaho**

**TWIN FALLS**  
**Monday, August 22nd, 2011, 4:00 pm-8:00 pm**

**College of Southern Idaho**  
**Taylor Bldg., Room 277**  
**315 Falls Ave**  
**Twin Falls, ID**

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must do the following:

Public may provide oral presentation at any of the above listed public hearings. You must arrive at a minimum one (1) hour prior to the end of the set hearing. Testimony will be taken on a first come first serve basis.

Written comments may be submitted in writing to Tracie Bent by mail or e-mail. Submit comments to Tracie Bent, Office of the State Board of Education, PO Box 83720, Boise, Idaho 83720-0037 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Section 33-1627, Idaho Code, mandates the State Board of education promulgate rules to implement the provisions of said section, including the requirement for online course graduation requirements for the class of 2016 and the development of digital citizenship standards.

These rules will clarify the definition of “online course” contained in Section 33-1002A, Idaho Code, set the number of required online credits for graduation and any necessary alternate measure, and define additional digital citizenship standards.

A draft of the proposed language may be found at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). After receiving public input on the draft language, this language with any necessary changes will be submitted as a temporary and or proposed rule to the 2012 Idaho legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule 08.02.03, contact Tracie Bent, Chief Planning and Policy Officer, (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22nd, 2011.

DATED this July 5, 2011.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St

PO Box 83720  
Boise, ID 83720-0037  
Phone: (208)332-1582  
Fax: (208)334-2632

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

#### DOCKET NO. 09-0130-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 09.01.30.375 is being amended to limit when a corporate officer can be personally eligible for unemployment insurance benefits. IDAPA 09.01.30.550 allows claimants to file continued claim reports by facsimile or electronic mail. This will help eliminate the late payment of benefits to claimants filing from out of state.

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

Compliance with deadlines in amendments to governing law or federal programs and conferring a benefit.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no fiscal impact to the General Fund as a result of this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because IDAPA 09.01.30 is being changed to accurately reflect statutory language and conform with Section 72-1312A, Idaho Code passed during the 2011 Legislative Session.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Josh McKenna at 332-3570 ext. 3919.

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 August 24, 2011.

DATED this 6th of July, 2011.

Josh McKenna  
(Acting) Bureau Chief  
Idaho Department of Labor  
317 W. Main Street, Boise, Idaho 83735  
Phone 332-3570 ext. 3919 / Fax 334-6125

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 09-0130-1101

**375. FULLY EMPLOYED/NOT UNEMPLOYED.**

Ref. Section 72-1312(1), Idaho Code.

~~(3-19-99)~~(7-1-11)T

**01. Excessive Earnings Week.** An excessive earnings week is a week in which the claimant's wages allocable to that week are more than one and one-half (1-1/2) times the claimant's weekly benefit amount. (3-19-99)

**02. Leave of Absence.** A claimant who is on a mutually agreed upon leave of absence is employed and not eligible for benefits. In order to meet the definition of "leave of absence," the employer must have committed to the claimant's return to work at the end of the leave. (3-19-99)

**03. Suspension.** A claimant who has been suspended with or without pay for a specific number of days, who has been given a date to resume employment after the suspension, is not considered unemployed and is not eligible for benefits. (3-15-02)

**04. Corporate Officer.** A corporate officer whose claim for benefits is based on wages with a corporation in which the corporate officer or a family member of the corporate officer has an ownership interest is considered unemployed and eligible for benefits only when his unemployment is due to circumstances beyond his control or the control of a family member of the corporate officer with an ownership interest in the corporation. A corporate officer has the burden of proving by a preponderance of evidence that he is unemployed due to circumstances beyond his control or the control of a family member with an ownership interest in the corporation. (7-1-11)T

**a.** Not unemployed. Corporate officers are not unemployed and are ineligible for benefits in any week during the corporate officer's term of office with the corporation even if wages are not being paid. (7-1-11)T

**b.** Circumstances beyond a corporate officer's control or the control of a family member with an ownership interest in the corporation. Circumstances beyond a corporate officer's or a family member's control are circumstances that last through the corporate officer's benefit year end date and include, but are not limited to, the following: (7-1-11)T

**i.** Unemployment due to the corporate officer's removal from the corporation under circumstances that satisfy the personal eligibility conditions set forth in Section 72-1366, Idaho Code; (7-1-11)T

**ii.** Unemployment due to dissolution of the corporation; or (7-1-11)T

**iii.** Unemployment due to the sale of the corporation to an unrelated third party. (7-1-11)T

**c.** Rebuttable presumption - Overpayment. If at any time during the benefit year the corporate officer resumes or returns to work for the corporation, it shall be a rebuttable presumption that the corporate officer's unemployment was due to circumstances within the corporate officer's control or the control of a family member with an ownership interest in the corporation, and all benefits paid to the corporate officer during the benefit year shall be considered an overpayment for which the corporate officer shall be liable for repayment. (7-1-11)T

**d.** Family member. "Family member" is defined as a person related by blood or marriage as a parent, stepparent, grandparent, spouse, brother, sister, child, stepchild, adopted child or grandchild. (7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**550. REPORTING REQUIREMENTS.**

Each claimant shall report weekly or biweekly for benefits as directed. When filing claim reports, a claimant shall use the reporting method assigned by the Department. Failure to file timely reports in a manner required by this rule shall result in ineligibility for benefits for the week(s) claimed. Ref. Section 72-1366(1), Idaho Code. ~~(4-2-08)~~(7-1-11)T

**01. In-Person Reports.** A claimant reporting in person must hand the report to an authorized employee of the local office or place it in a receptacle identified for that purpose. The Department will not accept reports deposited under or through the doors of the office. Reports filed in person at a local office shall be considered timely when filed within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the ~~following~~ next working day. ~~(3-19-99)~~(7-1-11)T

**02. Mailed Reports.** Reports that are mailed shall be considered timely when the envelope containing the report is postmarked within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period shall be extended to include the ~~following~~ next working day. ~~(3-19-99)~~(7-1-11)T

**03. Telephone/Internet Reports.** Reports filed by telephone to the Idaho Tel A Claim system or via the internet ~~must be~~ shall be considered timely when made between 12:01 a.m. Mountain Time of the Sunday following the week being claimed and midnight Mountain Time of the Saturday following the week being claimed. ~~(3-20-04)~~(7-1-11)T

**04. Facsimile Reports.** Reports filed by facsimile shall be considered timely when transmitted on a form provided by the Department to a telephone number designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department. (7-1-11)T

**05. Electronic Mail Reports.** Reports filed by electronic mail shall be considered timely when electronically mailed in a format provided by the Department to an email address designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department. (7-1-11)T

**046. When Report Missing.** If a claimant establishes, by credible and corroborated evidence, that a missing report was ~~personally delivered to a local office or mailed within the filing period~~ properly filed as required by this rule, a replacement report shall be considered timely. ~~(3-19-99)~~(7-1-11)T

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 09.01.35 is being amended to allow a corporation to exempt its corporate officers from unemployment insurance coverage and to reinstate corporate officers previously exempted. Corporations will not have to pay employment security contributions for exempt corporate officers and exempt corporate officers would not be eligible for unemployment insurance benefits.

**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: Compliance with deadlines in amendments to governing law or federal programs.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no fiscal impact to the General Fund as a result of this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because IDAPA 09.01.35.108 is being changed to accurately reflect statutory language and conform with Section 72-1312A, Idaho Code passed during the 2011 Legislative Session.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael Johnson at 332-3570 ext. 3082.

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 August 24, 2011.

DATED this 6th of July, 2011.

Michael Johnson  
(Acting) Bureau Chief  
Idaho Department of Labor  
317 West Main Street, Boise, Idaho 83735  
Phone 332-3570 ext. 3082 / Fax 334-6125



THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 09-0135-1101

**108. ELECTION TO EXEMPT CORPORATE OFFICERS.**

A corporation may elect to exempt one (1) or more corporate officers from coverage by registering with the Department each qualifying corporate officer it elects to exempt. Registrations in the format prescribed by the Department made on or before December 15th shall become effective on the first day of the next calendar year and remain effective for at least two (2) consecutive calendar years. Exemptions are not retroactive and no refund or credit shall be given for contributions paid before the effective date of the exemption. Exemptions continue to remain in effect after two (2) consecutive calendar years unless the exemption is terminated according to Subsection 108.04 of this rule or coverage is reinstated according to Subsection 108.05 of this rule. (7-1-11)T

**01. Public Company Election.** A public company, as defined in Section 72-1352A, Idaho Code, may elect to exempt any bona-fide corporate officer who: (7-1-11)T

**a.** Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; (7-1-11)T

**b.** Is a shareholder of the corporation; (7-1-11)T

**c.** Exercises control in the daily management of the corporation; and (7-1-11)T

**d.** Does not perform manual labor as a primary work responsibility. (7-1-11)T

**02. Election for Corporations that are not Public Companies.** A corporation that is not a public company as defined in Section 72-1352A, Idaho Code, may exempt from coverage any bona-fide corporate officer who: (7-1-11)T

**a.** Is a shareholder of the corporation; (7-1-11)T

**b.** Voluntarily agrees to be exempted from coverage; and (7-1-11)T

**c.** Exercises substantial control in the daily management of the corporation. (7-1-11)T

**03. Election to Exempt Not Applicable.** The election to exempt does not apply to corporate officers covered by Sections 72-1316A, 72-1322D and 72-1349C, Idaho Code. (7-1-11)T

**04. Termination of Exemption.** A corporate officer's exemption terminates upon the corporate officer's failure to satisfy the election criteria in Subsections 108.01 or 108.02 of this rule. It is the responsibility of the corporation to notify the Department in writing in a format required by the Department when an exempt corporate officer no longer meets the election criteria. A corporation is responsible for any taxes, penalties, and interest due after the date the exemption is terminated or should have been terminated. (7-1-11)T

**05. Reinstatement of Coverage.** A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted. Reinstatement requires written notice from the corporation to the Department in a format required by the Department. Reinstatement requests received by the Department on or before December 15th shall become effective the first day of the calendar year following the end of the exemption's initial two (2) year effective date. Coverage shall not be reinstated retroactively. (7-1-11)T

**06. Definitions.** For purposes of this rule: (7-1-11)T

**a.** "Bona-fide corporate officer" is defined as any individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or bylaws, to discharge the duties of a corporate officer. (7-1-11)T

**b.** “Exercise substantial control in the daily management of the corporation” is defined as when an individual makes managerial decisions over a business function or functions that have some effect on the entire corporation. This includes the authority to hire and fire, to direct other’s activities in the corporation, or the responsibility to account for and pay over taxes or debts incurred by the corporation. (7-1-11)T

**07. Services in Employment.** Unless specifically exempted, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance. (7-1-11)T

**08. FUTA Applicable.** The wages attributable to exempt corporate officers are wages subject to the Federal Unemployment Tax Act (FUTA) and the corporation may be liable for FUTA taxes. (7-1-11)T

**1089. -- 110. (RESERVED)**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.02 - RULES OF THE EMERGENCY MEDICAL SERVICES (EMS) PHYSICIAN COMMISSION

DOCKET NO. 16-0202-1101

#### 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 Sections 56-1013A and 56-1023, 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

To best protect the public's health and safety, the EMS Physician Commission is revising its Standards Manual that is incorporated by reference in this chapter of rules. This revision to rule will ensure that the most recent edition of the manual has the force and effect of law.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the content of the proposed updates to the EMS Physician Commission Standards Manual already represents extensive input from stakeholders gathered during 2010.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2012-1, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 28th day of June, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0202-1101**

**004. INCORPORATION BY REFERENCE.**

The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 201~~4~~<sup>2</sup>-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the [internet](#) or from the EMS Bureau located at 650 W. State Street, Suite B-17, Boise, Idaho, 83702, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036.

(~~4-7-11~~)(    )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.25 - FEES CHARGED BY THE STATE LABORATORY

DOCKET NO. 16-0225-1101

#### NOTICE OF RULEMAKING - PROPOSED FEE 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 Sections 56-1003 and 56-1007, 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking is needed to streamline and simplify the fees for laboratory tests, make the rule more understandable and more user-friendly, and allow the Bureau greater flexibility to respond to public health concerns.

The fee sections will be updated with a consolidated list of laboratory tests offered by the Bureau of Laboratories and their respective fees, as well as general categories and fees to implement new testing methods in a timely manner to respond to public health concerns. To reduce the technicality of the test names, the specific test methods will no longer be listed in the tables found in the body of these rules. As a result, the test methods incorporated by reference are no longer needed and will be removed. The associated definitions will also be removed.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

This rulemaking will increase a number of the fees charged for laboratory tests performed by the State Lab, while reducing others. The Director's authority to administer state laboratories is found in Section 56-1003(3)(b), Idaho Code. The authority to set fees is found in Section 56-1007, Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

No fiscal impact is associated with this rulemaking. The Bureau's calculations, based on SFY 2010 testing levels, indicate that the change in fees will not result in a decrease or increase of receipts.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes under this docket simplify and clarify the content, based on feedback from stakeholders since the chapter was put into place in the Spring of 2010.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules. Further, all the existing incorporations by reference are being removed from the chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tamara Hogg at (208) 334-2235 x262.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 1st day of July, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 16-0225-1101

**004. INCORPORATION BY REFERENCE.**

The re following are no documents incorporated by reference in this chapter of rules: (~~3-29-10~~)(    )

~~01. ASTM. D3977-97 Standard Test Methods for Determining Sediment Concentration in Water Samples (2002). American Society for Testing and Materials (ASTM) International. (3-29-10)~~

~~02. BAM. Bacteriological Analytical Manual (BAM). U.S. Department of Health and Human Services, U.S. Food and Drug Administration (FDA). (3-29-10)~~

~~03. EPA. The following are analytical test methods published by the U.S. Environmental Protection Agency (EPA). (3-29-10)~~

~~a. Approved general-purpose methods. (3-29-10)~~

~~b. Approved industry-specific methods. (3-29-10)~~

~~c. Oil and Grease Measurements. (3-29-10)~~

~~d. EPA 8000 Series Methods. (3-29-10)~~

~~e. Reference Method for the Determination of Fine Particulate Matter as PM 2.5 in the Atmosphere. 40 CFR Part 50, Appendix L, 2006. (3-29-10)~~

~~f. Reference Method for the Determination of Particulate Matter as PM 10 in the Atmosphere. 40 CFR Part 50, Appendix J, 1987. (3-29-10)~~

~~04. NIOSH. NIOSH Manual of Analytical Methods (NMAM®), 4th edition. P.C. Schlecht and P.F. O'Connor, editors. 1994. U.S. Department of Health and Human Services. (3-29-10)~~

~~05. SM. Standard Methods for the Examination of Water and Wastewater, 20th edition. Clesceri, Lenore S., Arnold E. Greenburg, and Andrew D. Eaton, Eds. 1998. American Public Health Association, American Water Works Association, and Water Environment Federation. (3-29-10)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

For the purposes of these rules, the following terms are used as defined below: (3-29-10)

- ~~01.~~ *ASTM. Refers to a standard analytical test method published by the American Society for Testing and Materials International, as incorporated by reference under Section 004 of these rules. (3-29-10)*
- ~~02.~~ *BAM. Refers to a bacteriological analytical test method published by the U.S. Food and Drug Administration, as incorporated by reference under Section 004 of these rules. (3-29-10)*
- 031.** **Clinical Laboratory Tests.** Microbiological analysis for diagnosis of infectious diseases affecting human health. (3-29-10)
- ~~042.~~ **Department.** Idaho Department of Health and Welfare. (3-29-10)
- ~~053.~~ **Director.** The Director of the Idaho Department of Health and Welfare or designee. (3-29-10)
- 064.** **Environmental Laboratory Tests.** Analysis of various samples from air, microbiological, organic, or inorganic sources. (3-29-10)
- ~~07.~~ *EPA. Refers to an analytical test method published by the U.S. Environmental Protection Agency, as incorporated by reference under Section 004 of these rules. (3-29-10)*
- ~~08.~~ *NIOSH. Refers to an analytical test method published by the National Institute for Occupational Safety and Health, as incorporated by reference under Section 004 of these rules. (3-29-10)*
- ~~09.~~ *SM. Refers to a standard method of water testing published in the Standard Methods for the Examination of Water and Wastewater, as incorporated by reference under Section 004 of these rules. (3-29-10)*
- ~~105.~~ **State Health Official.** Administrator of the Department’s Division of Public Health. (3-29-10)
011. -- 099. **(RESERVED)**
- 100. FEES FOR CLINICAL LABORATORY TESTS.**

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
<del>16S rDNA Sequence Analysis</del>	<del>\$70.00</del>
<del>Antimicrobial Susceptibility</del>	<del>\$62.00</del>
<del>Biochemical Identification System</del>	<del>\$38.00</del>
<u>Agglutination - Not Otherwise Specified</u>	<u>\$9.00</u>
<u>Bacterial Primary Culture - Not Otherwise Specified</u>	<u>\$51.00</u>
Bordetella pertussis, Culture	\$ <del>48</del> 27.00
<del>Bordetella pertussis, FA</del>	<del>\$43.00</del>
Bordetella pertussis, <del>RT</del> PCR	\$ <del>25</del> 42.00
<del>Campylobacter, Confirmation</del>	<del>\$23.00</del>
<del>Campylobacter, DNA Probe</del>	<del>\$77.00</del>
Chlamydia trachomatis and Neisseria gonorrhoeae by Nucleic Acid Amplification	\$16.00
Cryptosporidium/Giardia, IFA	\$69.00

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
<del>Cytomegalovirus, IGG Antibody, IFA</del>	<del>\$56.00</del>
<del>Cytomegalovirus, IGM Antibody, IFA</del>	<del>\$56.00</del>
<del>Diphtheria, Primary Culture</del>	<del>\$68.00</del>
Disk Diffusion Test	\$ <del>8</del> 17.00
<del>Escherichia coli/Shiga Toxin PCR</del>	<del>\$98.00</del>
<del>Escherichia coli 0157 Immunocard</del>	<del>\$30.00</del>
<del>Escherichia coli 0157:H7, Confirmation</del>	<del>\$17.00</del>
<del>Escherichia coli 0157:H7, Culture</del>	<del>\$11.00</del>
<del>Escherichia coli, Serotyping</del>	<del>\$75.00</del>
<u>Enzyme-Linked Immunoassay (EIA) - Not Otherwise Specified</u>	<u>15.00</u>
Enteric Pathogens, Primary Culture ( <del>Salmonella, Shigella, Campylobacter</del> )	\$ <del>24</del> 68.00
<del>Enteric Pathogens, Primary Culture (Aeromonas spp., Plesiomonas shigelloides, Bacillus cereus, Clostridium perfringens, Staphylococcus aureus, Vibrio spp., Yersinia spp., Listeria monocytogenes)</del>	<del>\$63.00</del>
Enterovirus Isolation	\$95.00
<del>E-Test</del>	<del>\$28.00</del>
<del>Fungus, LSU rDNA Sequence Analysis</del>	<del>\$70.00</del>
<u>Fluorescent Antibody (FA) - Not Otherwise Specified</u>	<u>\$53.00</u>
Hantavirus, IGG & IGM Antibody, EIA	\$ <del>30</del> 167.00
<del>Hemagglutination Inhibition</del>	<del>\$80.00</del>
Hepatitis B, Core Total Antibody, EIA	\$15.00
Hepatitis B, Surface Antibody, EIA	\$15.00
Hepatitis B, Surface Antigen Confirmation, EIA	\$127.00
Hepatitis B, Surface Antigen, EIA	\$15.00
Hepatitis C, Antibody, EIA	\$20.00
Herpes Simplex Type 1 & Type 2, IGG Antibody, EIA	\$35.00
Herpes Simplex Virus Isolation	\$53.00
HIV-1/ <u>2 Plus O</u> , Antibody, EIA	\$15.00
HIV-1, Western Blot	\$311.00
Influenza Virus, RT-PCR	\$69.00
Legionella, Culture, Clinical	\$120.00
<u>Microsphere Immunoassay (MIA) - Not Otherwise Specified</u>	<u>\$64.00</u>
Mumps, IGG Antibody, EIA	\$15.00
Mumps, IGM Antibody, IFA	\$56.00



Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
Mumps, Virus Isolation	\$88.00
Mycobacteria, AFS-Fluorochrome	\$98.00
<del>Mycobacteria, Biochemical Test</del>	<del>\$35.00</del>
Mycobacteria, Drug Susceptibility	\$373.00
Mycobacteria, Primary Culture	\$ <del>45</del> 7.00
Mycobacteria, Reference Culture	\$1 <del>9</del> 30.00
Mycobacteria, Tuberculosis Quantiferon -TB Gold In Tube	\$ <del>90</del> 85.00
<del>Mycobacteria, Ziehl-Neelsen Stain</del>	<del>\$15.00</del>
<del>Neisseria gonorrhoeae, DNA Probe</del>	<del>\$49.00</del>
Neisseria gonorrhoeae, Primary Culture	\$ <del>12</del> 37.00
Norovirus, RT-PCR	\$66.00
<del>Nucleic Acid Probe</del>	<del>\$142.00</del>
<del>Parasite Exam, Blood or Tissue</del>	<del>\$19.00</del>
Parasite Exam, Concentrate & Trichrome Stain	\$ <del>76</del> 94.00
<del>Parasite Exam, Gross</del>	<del>\$49.00</del>
<del>Parasite Exam, Microscopic</del>	<del>\$20.00</del>
<u>Plaque Reduction Neutralization Test (PRNT) - Not Otherwise Specified</u>	<u>\$260.00</u>
<u>Polymerase Chain Reaction (PCR) - Not Otherwise Specified</u>	<u>\$62.00</u>
Pulsed Field Gel Electrophoresis	\$90.00
Rabies, FA	\$50.00
<u>rDNA Sequence Analysis</u>	<u>\$113.00</u>
Reference Culture, Aerobe	\$ <del>28</del> 49.00
Reference Culture, Anaerobe	\$ <del>48</del> 1.00
<del>Reference Culture, Serotyping</del>	<del>\$64.00</del>
Respiratory Virus Isolation	\$94.00
Rubella, IGG Antibody, EIA	\$15.00
Rubella, IGM Antibody, EIA	\$ <del>82</del> 47.00
Rubeola (Measles), IGG Antibody, EIA	\$15.00
Rubeola (Measles), IGM Antibody, EIA	\$ <del>95</del> 37.00
<del>Salmonella, Serotyping</del>	<del>\$37.00</del>
<u>Serotyping</u>	<u>\$73.00</u>
Shiga Toxin, Immunoassay	\$ <del>42</del> 1.00
<del>Shigella, Serogrouping</del>	<del>\$30.00</del>

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
<del>Shigella flexneri, Serogrouping</del>	<del>\$30.00</del>
<del>St. Louis Encephalitis, RT-PCR</del>	<del>\$52.00</del>
Staphylococcus aureus, Methicillin Resistant (MRSA), Identification/Confirmation	\$296.00
Staphylococcus aureus, Methicillin Resistant (MRSA), PCR	\$45278.00
Syphilis, Treponema Pallidum Passive Agglutination	\$343.00
Syphilis, Venereal Disease Research Laboratory (VDRL)	\$9.00
Syphilis, Venereal Disease Research Laboratory (VDRL), Quantitative	\$6.00
Vancomycin Resistant Enterococcus (VRE)	\$93119.00
Vancomycin-Intermediate/Resistant Staphylococcus aureus (VISA)	\$93119.00
Varicella Zoster, IGG Antibody, EIA	\$15.00
Varicella Zoster, IGM Antibody, IFA	\$56.00
Varicella Zoster, Virus Isolation	\$91.00
<del>West Nile Virus/St. Louis Encephalitis Virus, CDC MAC ELISA</del>	<del>\$81.00</del>
<del>Viral Culture - Not Otherwise Specified</del>	<del>\$67.00</del>
<del>West Nile Virus, IGG Antibody Screen, EIA</del>	<del>\$73.00</del>
<del>West Nile Virus, IGM Antibody Screen, EIA</del>	<del>\$78.00</del>
West Nile Virus/St. Louis Encephalitis Virus IGM Antibody, Microsphere Immunoassay	\$4965.00
West Nile Virus/St. Louis Encephalitis Virus Plaque Reduction Neutralization Test (PRNT)	\$278.00
<del>West Nile Virus, IGG Antibody Screen, EIA</del>	<del>\$73.00</del>
<del>West Nile Virus, IGM Antibody Screen, EIA</del>	<del>\$78.00</del>
West Nile Virus/ <del>St. Louis Encephalitis Virus/Western Equine Encephalitis</del> , RT-PCR	\$58156.00
<del>Western Equine Encephalitis, RT-PCR</del>	<del>\$52.00</del>

(3-29-10)( )

101. -- 199. (RESERVED)

200. FEES FOR ENVIRONMENTAL LABORATORY TESTS.

01. Environmental Laboratory Tests, Air -- Table.

Fees for Environmental Laboratory Tests -- Air	
Air Test Name	Fee
PM10, EQPM-1102-150, Air	\$813.00

Fees for Environmental Laboratory Tests -- Air	
Air Test Name	Fee
PM25, RFPS-0499-129, Air	\$20.00

(3-29-10)( )

02. Environmental Laboratory Tests, Microbiology -- Table.

Fees for Environmental Laboratory Tests -- Microbiology	
Microbiology Test Name	Fee
<del>Bacillus cereus, BAM14, Food or Vegetation</del>	<del>\$93.00</del>
<del>Bacillus cereus, Enterotoxin</del>	<del>\$96.00</del>
<del>Clostridium perfringens ENTER, PET-RPLA</del>	<del>\$95.00</del>
<del>Campylobacter, BAM7, Food or Vegetation</del>	<del>\$75.00</del>
<del>Clostridium perfringens, BAM16</del>	<del>\$22.00</del>
<del>Computer Augmented Identification System</del>	<del>\$50.00</del>
<del>Escherichia coli H7 Confirmation, Latex Agglutination</del>	<del>\$20.00</del>
<del>Escherichia coli O157 Confirmation, Latex Agglutination</del>	<del>\$20.00</del>
Escherichia coli O157:H7, 9260F	\$100.00
<del>Escherichia coli O157:H7, Screen, BAM4A, Food or Vegetation</del>	<del>\$32.00</del>
<del>Escherichia coli, SM 9221F, Soil</del>	<del>\$28.00</del>
<del>Escherichia coli, SM 9221F, Water</del>	<del>\$26.00</del>
<del>ECO, CLPP, Developmental, Water</del>	<del>\$22.00</del>
<del>Fecal Coliform, SM 9221E, Soil</del>	<del>\$25.00</del>
<del>Fecal Coliform, SM 9221E, Water</del>	<del>\$25.00</del>
<del>Fecal Coliform, SM 9222D, Water</del>	<del>\$22.00</del>
Heterotrophic Plate Count, <del>SM 9215B-R2A</del>	\$25.00
<del>Heterotrophic Plate Count, SM 9215B-SPC</del>	<del>\$25.00</del>
<del>Identification of Iron Bacteria, Water</del>	<del>\$33.00</del>
Identification System, Water, Food or Vegetation	\$50.00
Legionella, <del>SM 9260J</del> , Water	\$ <del>35</del> 100.00
<del>Listeria Screen, BAM10, Food or Vegetation</del>	<del>\$75.00</del>
<u>Pathogen Screen, Water, Food, or Vegetation</u>	<u>\$23.00</u>
Pseudomonas aeruginosa, <del>SM 9213F</del> , Water	\$ <del>7</del> 25.00
<u>Salmonella Confirmation, Water</u>	<u>\$75.00</u>
<del>Quanti Tray, SM 9223B</del>	<del>\$20.00</del>
<del>Salmonella Screen, BAM5, Food or Vegetation, Water</del>	<del>\$23.00</del>

Fees for Environmental Laboratory Tests -- Microbiology	
Microbiology Test Name	Fee
<del>Salmonella, SM 9260B, Water</del>	<del>\$75.00</del>
<del>Staphylococcus aureus Confirmation, BAM12AUX, Food or Vegetation</del>	<del>\$47.00</del>
<del>Staphylococcus aureus Isolation, BAM12, Food or Vegetation, Water</del>	<del>\$15.00</del>
<del>Staphylococcal Enterotoxin</del>	<del>\$130.00</del>
Total Coliform, <del>SM 9221B, Water</del> /E. coli, Presence/Absence	\$2918.00
<del>Total Coliform, SM 9221BC, Drinking Water</del>	<del>\$16.00</del>
<del>Total Coliform, SM 9222B, Water</del>	<del>\$18.00</del>
<del>Total Coliform, SM 9223B-PA-CS</del>	<del>\$11.00</del>
Total Coliform, <del>SM 9223B-PA-CT</del> /E. coli, Quantitative	\$1820.00
Total Coliform, <del>SM 9223B-QT-CS</del> /Fecal Coliform/E. coli (MPN)	\$1528.00
<del>Total Coliform, SM 9223B-QT-CT</del>	<del>\$15.00</del>

(3-29-10)( )

03. Environmental Laboratory Tests, Inorganic -- Table.

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
5-Day BOD, Water	\$45.00
Alkalinity (CaCO <sub>3</sub> ), <del>SM 2320B</del> , Water	\$14.00
Ammonia as N, Water	\$18.00
Arsenic Speciation	\$150.00
Arsenic, Water	\$21.00
<del>BOD-5, SM 5210B, Water</del>	<del>\$31.00</del>
Bromate, Water	\$100.00
Bromide, Water	\$32.00
Chemical Oxygen Demand, Water	\$29.00
Chlorate, Water	\$100.00
Chloride, Water	\$19.00
Chlorite, Water	\$150.00
Chlorophyll A, <del>SM 10200H, Water</del> and Pheophytin A, <del>SM 10200H, Water</del>	\$40075.00
Conductivity, <del>SM 2510B</del> , Water	\$11.00
Corrosivity, Calculation, Water	\$59.00
Cyanide, Total, <del>SM 4500</del> Water or Soil	\$33.00
<del>Cyanide, Total, SM 4500, Water</del>	<del>\$33.00</del>

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
Cyanide, WAD, <del>SM 4500, Water</del> or Soil	\$33.00
<del>Cyanide, WAD, SM 4500, Water</del>	<del>\$33.00</del>
<u>Direct Mercury Analysis</u>	<u>\$44.00</u>
<del>EPA 180.1, Turbidity, Water</del>	<del>\$13.00</del>
<del>EPA 200.2—Metals Digestion</del>	<del>\$19.00</del>
<del>EPA 200.7, Dissolved, ICP (Metals Digestion is performed and charged for when turbidity is above 1 NTU)</del>	<del>\$13.00</del>
<del>EPA 200.7, Drinking Water, ICP (Metals Digestion is performed and charged for when turbidity is above 1 NTU)</del>	<del>\$13.00</del>
<del>EPA 200.7, Water, ICP (Metals Digestion is performed and charged for when turbidity is above 1 NTU)</del>	<del>\$13.00</del>
<del>EPA 200.8, Uranium, Water</del>	<del>\$44.00</del>
<del>EPA 200.8, Water, ICPMS – Excludes Uranium (Fee is for each individual metal tested)</del>	<del>\$13.00</del>
<del>EPA 200.9, Dissolved, AA</del>	<del>\$21.00</del>
<del>EPA 200.9, Water, AA</del>	<del>\$21.00</del>
<del>EPA 200.9, Water, GFAA</del>	<del>\$21.00</del>
<del>EPA 245.1, Mercury, Dissolved, CVAA</del>	<del>\$29.00</del>
<del>EPA 245.1, Mercury, Water, CVAA</del>	<del>\$29.00</del>
<del>EPA 245.7, Mercury, Water, CVAFS</del>	<del>\$34.00</del>
<del>EPA 300.0, Chloride, Water</del>	<del>\$19.00</del>
<del>EPA 300.0, Fluoride, Water</del>	<del>\$19.00</del>
<u>Hardness, Water</u>	<u>\$22.00</u>
<u>Lead, Water</u>	<u>\$21.00</u>
<u>Mercury, Water</u>	<u>\$34.00</u>
<u>Metals Digestion, Water, Soil, or Solids</u>	<u>\$19.00</u>
<u>Metals each (Aluminum, Antimony, Barium, Beryllium, Boron, Cadmium, Calcium, Chromium, Cobalt, Copper, Iron, Magnesium, Manganese, Molybdenum, Nickel, Potassium, Selenium, Silicon, Silver, Sodium, Strontium, Thallium, Tin, Vanadium, Zinc)</u>	<u>\$13.00</u>
<u>Metals Speciation</u>	<u>\$150.00</u>
<u>Nitrate + Nitrite as N, Water</u>	<u>\$19.00</u>
<del>EPA 300.0, Nitrate as N, Water</del>	<del>\$19.00</del>
<u>Nitrite as N, Water</u>	<u>\$19.00</u>
<del>EPA 300.0, Sulfate, Water</del>	<del>\$19.00</del>

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
<del>EPA 300.1, Bromate, Water</del>	<del>\$100.00</del>
<del>EPA 300.1, Bromide, Water</del>	<del>\$32.00</del>
<del>EPA 300.1, Chlorate, Water</del>	<del>\$100.00</del>
<del>EPA 300.1, Chlorite, Water</del>	<del>\$150.00</del>
<del>EPA 350.1, Ammonia as N, Water</del>	<del>\$18.00</del>
<u>Orthophosphate as P, Water</u>	<u>\$17.00</u>
<u>pH, Water</u>	<u>\$10.00</u>
<u>Settleable Solids, Water</u>	<u>\$16.00</u>
<u>Sulfate, Water</u>	<u>\$19.00</u>
<u>Sulfide as H<sub>2</sub>S, Water</u>	<u>\$19.00</u>
<u>TCLP Extraction</u>	<u>\$165.00</u>
<u>Total Dissolved Solids, Water</u>	<u>\$15.00</u>
<del>EPA 351.2, Total Kjeldahl Nitrogen, Soil</del>	<del>\$53.00</del>
<del>EPA 351.2, Total Kjeldahl Nitrogen, Water</del>	<del>\$34.00</del>
<del>EPA 353.2, Nitrate as N, Water</del>	<del>\$19.00</del>
<del>EPA 353.2, Nitrate+Nitrite as N, Water</del>	<del>\$17.00</del>
<del>EPA 365.1, Total Phosphorus, <del>Lach</del>, Water</del>	<del>\$24.00</del>
<del>EPA 376.2, Sulfide as H<sub>2</sub>S, Water</del>	<del>\$19.00</del>
<del>EPA 410.2, COD, Water</del>	<del>\$29.00</del>
<del>EPA 1311, TCLP Extraction</del>	<del>\$165.00</del>
<del>EPA 3005A, Metals Digestion</del>	<del>\$19.00</del>
<del>EPA 3050B, Metals Digestion</del>	<del>\$19.00</del>
<del>EPA 7473, Mercury</del>	<del>\$44.00</del>
<del>EPA 8231, Hach, COD, Water</del>	<del>\$29.00</del>
<del>Hardness, SM 2340C, Water</del>	<del>\$22.00</del>
<del>Nitrite as N, SM 4500, Water</del>	<del>\$16.00</del>
<del>Orthophosphate as P, SM 4500, Dissolved</del>	<del>\$17.00</del>
<del>Orthophosphate as P, SM 4500, Water</del>	<del>\$17.00</del>
<del>PH, SM 4500H, Water,</del>	<del>\$10.00</del>
<del>Pheophytin A, SM 10200H, Water (See Chlorophyll A, SM 10200H, Water and Pheophytin A, SM 10200H, Water)</del>	
<del>Settleable Solids, SM 2540F, Water</del>	<del>\$16.00</del>
<del>SM 3111 (Pb, Co-TCLP, Cu-TCLP)</del>	<del>\$14.00</del>

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
<del>SM 6010B, Soil, ICP</del>	<del>\$11.00</del>
<del>Total Dissolved Solids, SM 2540C, Water</del>	<del>\$15.00</del>
Total Solids, <del>SM 2540B</del> , Water	\$13.00
Total Suspended Sediment, <del>ASTM 3977</del> , Water	\$14.00
Total Suspended Solids, <del>SM 2540D</del> , Water	\$14.00
<u>Turbidity, Water</u>	<u>\$13.00</u>
<u>Uranium, Water</u>	<u>\$44.00</u>
Volatile Solids, <del>SM 2540G</del> , Water	\$24.00

(3-29-10)( )

04. Environmental Laboratory Tests, Organic -- Table.

Fees for Environmental Laboratory Tests -- Organic	
Organic Test Name	Fee
<u>1,2-dibromo-3-chloropropane/ethylene dibromide (DBCP/EDB/TCP), Water</u>	<u>\$100.00</u>
<u>Benzene, Toluene, Ethylbenzene and Xylenes (BTEX)</u>	<u>\$97.00</u>
<u>Carbamates, Water</u>	<u>\$169.00</u>
<u>Chlorinated Herbicides, Water</u>	<u>\$162.00</u>
<u>Diquat, Water</u>	<u>\$117.00</u>
ELISA, Water (Submitter provides test kit; cost is for the analysis of each <del>test kit</del> sample)	<del>\$102.00</del>
<u>Endothall, Water</u>	<u>\$144.00</u>
<u>Glyphosate, Water</u>	<u>\$142.00</u>
<u>Haloacetic Acids, Water</u>	<u>\$150.00</u>
<u>Oil and Grease, Water</u>	<u>\$44.00</u>
<u>Organochlorine Pesticides, Water</u>	<u>\$135.00</u>
<u>Polychlorinated Biphenyls (PCBs)</u>	<u>\$117.00</u>
<u>Polycyclic aromatic hydrocarbons (PAHs), Soil</u>	<u>\$200.00</u>
<u>Semi-volatile Compounds, Water</u>	<u>\$182.00</u>
<u>Semi-volatile, GC-MS Screen (Qualitative Results)</u>	<u>\$125.00</u>
<u>Total Trihalomethanes (TTHMs)</u>	<u>\$100.00</u>
<u>Trichloroethylene (TCE) Tetrachloroethylene (PCE), Air</u>	<u>\$50.00</u>
<u>Unknown Identification</u>	<u>\$100.00</u>
<u>Volatile Organic Compounds (VOC), Water and Soil</u>	<u>\$187.00</u>

<b>Fees for Environmental Laboratory Tests -- Organic</b>	
<b>Organic Test Name</b>	<b>Fee</b>
<del>EPA 504.1, Water, GC-ECD</del>	<del>\$100.00</del>
<del>EPA 508, Water, GC-ECD</del>	<del>\$135.00</del>
<del>EPA 515.4, Water, GC-ECD</del>	<del>\$162.00</del>
<del>EPA 524.2(4), Water, GCMS, P&amp;T</del>	<del>\$187.00</del>
<del>EPA 525.2, Water, GCMS</del>	<del>\$182.00</del>
<del>EPA 531.2, Water, HPLC</del>	<del>\$169.00</del>
<del>EPA 547, Water, HPLC</del>	<del>\$142.00</del>
<del>EPA 548.1, Water, GCMS</del>	<del>\$144.00</del>
<del>EPA 549.2, Water, HPLC</del>	<del>\$117.00</del>
<del>EPA 552.2, HAAs, GC-ECD, Water</del>	<del>\$150.00</del>
<del>EPA 1664, Oil and Grease, Water</del>	<del>\$44.00</del>
<del>EPA 5035/8260, BTEX</del>	<del>\$97.00</del>
<del>EPA 8081 PCBs</del>	<del>\$117.00</del>
<del>EPA 8260, BTEX</del>	<del>\$97.00</del>
<del>EPA 8260B, Soil, GCMS, P&amp;T</del>	<del>\$187.00</del>
<del>EPA 8260B, Water, GCMS, P&amp;T</del>	<del>\$187.00</del>
<del>EPA 8270, Soil, PAH</del>	<del>\$349.00</del>
<del>Hazardous Waste Analysis</del>	<del>\$50.00</del>
<del>TCE, PCE, NIOSH 1003, Air, FID</del>	<del>\$50.00</del>

(3-29-10)( )



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.05 - ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED (AABD)**

**DOCKET NO. 16-0305-1101**

**NOTICE OF RESCISSION OF TEMPORARY RULE AND  
VACATION OF PROPOSED RULEMAKING**

**EFFECTIVE DATE FOR RESCISSION OF TEMPORARY RULE:** The effective date of the rescission of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Section 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted and is vacating the proposed rulemaking initiated under this docket. The action is authorized pursuant to Section 56-202, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule and vacating the previously initiated rulemaking:

The Department has determined that this temporary and proposed rulemaking is not needed since the rules regarding the Children's Developmental Disabilities (DD) Waiver(s) found in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," fully address requirements for accessing these enhanced benefits.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no cost to the state general fund associated with this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule and vacation of the proposed rulemaking, contact Alberto Gonzalez at (208) 334-5969.

DATED this 19th day of July, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
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Boise, ID 83720-0036  
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**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1102**

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

**EFFECTIVE DATE:** The effective date of these temporary rules is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 56-203(7), 56-203(9), 56-250 through 56-257, 56-260 through 56-266, 56-1504, 56-1505, and 56-1511, and 56-1601 through 56-1610, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department is continuing rule changes published as temporary rules under [Docket No. 16-0309-1004, in the September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9](#), regarding changes in the definition for hospital floor reimbursement percentage and the reduction to outpatient hospital costs. House Bill 260, adopted by the 2011 Legislature, repealed, amended, and added statutes that are being referenced and updated in the Legal Authority section of these rules.

**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:

These rule changes implement statutory changes adopted by the 2011 Legislature and continue statutory changes made regarding hospital reimbursement.

**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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The state general fund savings associated with this rulemaking are estimated to be \$388,000 for the state fiscal year 2012 and was included in the Department's appropriations for SFY 2012.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is in response to 2011 legislation.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Robert Kellerman at (208) 364-1994.

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 August 24, 2011.

DATED this 8th day of July, 2011.

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0309-1102**

**000. LEGAL AUTHORITY.**

**01. Rulemaking Authority.** The Idaho Department of Health and Welfare has the authority to promulgate public assistance rules under Section 56-202(b), and 56-264, 56-1610, Idaho Code. ~~(3-30-07)~~(7-1-11)T

**02. General Administrative Authority.** Titles XIX and XXI of the Social Security Act, as amended, and the companion federal regulations, are the basic authority for administration of the federal program. General administrative duties for the Department are found under Section 56-202, Idaho Code. (3-30-07)

**03. Administration of the Medical Assistance Program.** (3-30-07)

**a.** Section 56-203(7), Idaho Code, empowers the Department to define persons entitled to medical assistance. (3-30-07)

**b.** Section 56-203(9), Idaho Code, empowers the Department to identify the amount, duration, scope of care, and services to be purchased as medical assistance on behalf of individuals eligible to receive benefits under the Medical Assistance Program. (3-30-07)

**c.** Sections 56-250 through 56-257, and 56-260 through 56-266, Idaho Code, establish minimum standards that enable these rules. ~~(3-30-07)~~(7-1-11)T

**04. Fiscal Administration.** (3-30-07)

**a.** Fiscal administration of these rules is authorized by Titles XIX and XXI of the Social Security Act, as well as 42 CFR Part 447 and the Provider Reimbursement Manual (PRM) Part I and Part II found in CMS Publication 15-1 and 15-2. Provisions of the PRM, as incorporated in Section 004 of these rules, apply unless otherwise provided for in these rules. (3-30-07)

**b.** Title 56, Chapter 1, Idaho Code, establishes standards for provider payment for certain Medicaid providers. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. INPATIENT HOSPITAL SERVICES - DEFINITIONS.**

**01. Administratively Necessary Day (AND).** An Administratively Necessary Day (AND) is intended to allow a hospital time for an orderly transfer or discharge of participant inpatients who are no longer in need of a continued acute level of care. ANDs may be authorized for inpatients who are awaiting placement for nursing facility level of care, or in-home services which are not available, or when catastrophic events prevent the scheduled

discharge of an inpatient. (3-30-07)

**02. Allowable Costs.** The current year's Medicaid apportionment of a hospital's allowable costs determined at final or interim settlement consist of those costs permitted by the principles of reimbursement contained in the Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (3-30-07)

**03. Apportioned Costs.** Apportioned costs consist of the share of a hospital's total allowable costs attributed to Medicaid program participants and other patients so that the share borne by the program is based upon actual services received by program participants, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in the PRM and in compliance with Medicaid reimbursement rules. (3-30-07)

**04. Capital Costs.** For the purposes of hospital reimbursement, capital costs are those allowable costs considered in the settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (3-30-07)

**05. Case-Mix Index.** The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the current year will be divided by the index of the principal year to assess the percent change between the years. (3-30-07)

**06. Charity Care.** Charity care is care provided to individuals who have no source of payment, third-party or personal resources. (3-30-07)

**07. Children's Hospital.** A Medicare-certified hospital as set forth in 42 CFR Section 412.23(d). (3-30-07)

**08. Critical Access Hospitals (CAH).** A rural hospital with twenty five (25) or less beds as set forth in 42 CFR Section 485.620. (4-7-11)

**09. Current Year.** Any hospital cost reporting period for which reasonable cost is being determined will be termed the current year. (3-30-07)

**10. Customary Hospital Charges.** Customary hospital charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Department. (7-1-11)T

**a.** No more than ninety-one and seven-tenths percent (91.7%) of covered charges will be reimbursed for the separate operating costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 405.03.b. of these rules. ~~(3-29-10)~~(7-1-11)T

**b.** For in-state hospitals that are not specified in Section 56-1408, Idaho Code, no more than one hundred percent (100%) of covered charges will be reimbursed. (7-1-11)T

**c.** No more than one hundred one percent (101%) of covered charges will be reimbursed to Critical Access Hospitals (CAH) for in-state hospitals. (7-1-11)T

**d.** No more than eighty-seven and one-tenth percent (87.1%) of covered charges will be reimbursed to out-of-state hospitals. (7-1-11)T

**11. Disproportionate Share Hospital (DSH) Allotment Amount.** The DSH allotment amount determined by CMS that is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (3-30-07)

**12. Disproportionate Share Hospital (DSH) Survey.** The DSH survey is an annual data request from

the Department to the hospitals to obtain the information necessary to compute DSH in accordance with Subsection 405.09.a. of these rules. (3-30-07)

- 13. Disproportionate Share Threshold.** The disproportionate share threshold is: (3-30-07)
- a.** The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (3-30-07)
- b.** A Low Income Revenue Rate exceeding twenty-five percent (25%). (3-30-07)
- 14. Excluded Units.** Excluded units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (3-30-07)
- 15. Hospital Inflation Index.** An index calculated through Department studies and used to adjust inpatient operating cost limits and interim rates for the current year. (3-30-07)
- 16. Low Income Revenue Rate.** The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (3-30-07)
- a.** Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (3-30-07)
- b.** The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care must not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (3-30-07)
- 17. Medicaid Inpatient Day.** For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (3-30-07)
- 18. Medicaid Utilization Rate (MUR).** The MUR for each hospital will be computed using the Department's record of paid inpatient days for the fiscal year divided by the total inpatient days for the same fiscal year as reported in the DSH survey. In this paragraph, the term "inpatient days" includes administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of care, and Medicaid inpatient days from other states. In this paragraph, "Medicaid inpatient days" includes paid days not counted in prior DSH threshold computations. (4-7-11)
- 19. Obstetricians.** For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (3-30-07)
- 20. On-Site.** A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose relation to budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location must be in close proximity to the hospital where it is based, and both facilities serve the same patient population (e.g. from the same area, or catchment, within Medicare's defined Metropolitan Statistical Area (MSA) for urban hospitals or thirty-five (35) miles from a rural hospital). (3-30-07)
- 21. Operating Costs.** For the purposes of hospital reimbursement, operating costs are the allowable costs included in the cost centers established in the finalized Medicare cost report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process. (3-30-07)

**22. Other Allowable Costs.** Other allowable costs are those reasonable costs recognized under the Medicaid reasonable cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as operating costs, but recognized by Medicare principles as allowable costs will be included in the total reasonable costs. Other allowable costs include, but are not necessarily limited to, physician's component which was combined-billed, capital costs, ambulance costs, excess costs, carry-forwards and medical education costs. (3-30-07)

**23. Principal Year.** The principal year is the period from which the Medicaid Inpatient Operating Cost Limit is derived. (3-30-07)

**a.** For inpatient services rendered on or after November 1, 2002, the principal year is the provider's fiscal year ending in calendar year 1998 in which a finalized Medicare cost report or its equivalent is prepared for Medicaid cost settlement. (3-30-07)

**b.** For inpatient services rendered on or after January 1, 2007, the principal year is the provider's fiscal year ending in calendar year 2003. (4-7-11)

**c.** For inpatient services on or after July 1, 2010, the principal year will be the Medicare cost report period used to prepare the Medicaid cost settlement. (4-7-11)

**24. Public Hospital.** For purposes of Subsection 405.03.b. of these rules, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality. (3-30-07)

**25. Reasonable Costs.** Except as otherwise provided in Section 405.03 of these rules, reasonable costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Medicaid cost limit. (3-30-07)

**26. Reimbursement Floor Percentage.** ~~The floor calculation for hospitals with more than forty (40) beds is seventy-seven and four-tenths percent (77.4%) of Medicaid costs, and the floor calculation for hospitals with forty (40) or fewer beds is ninety-one and seven-tenths percent (91.7%).~~ (3-29-10)(7-1-11)T

**a.** ~~The floor calculation for out-of-state hospitals is seventy-three and five-tenths percent (73.5%) of Medicaid costs.~~ (7-1-11)T

**b.** ~~The floor calculation for in-state CAH hospitals is one hundred one percent (101%) of Medicaid costs.~~ (7-1-11)T

**c.** ~~For in-state hospitals that are not specified in Section 56-1408, Idaho Code, the floor calculation is eighty-five percent (85%) of Medicaid costs.~~ (7-1-11)T

**d.** ~~For in-state hospitals that are specified in Section 56-1408, Idaho Code, the floor calculation is seventy-seven and four-tenths percent (77.4%) of Medicaid costs.~~ (7-1-11)T

**27. TEFRA.** TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (3-30-07)

**28. Uninsured Patient Costs.** For the purposes of determining the additional costs beyond uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment Amount, only inpatient costs of uninsured patients will be considered. (4-7-11)

**29. Upper Payment Limit.** The Upper Payment Limit for hospital services is defined in the Code of Federal Regulations. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**415. OUTPATIENT HOSPITAL SERVICES: PROVIDER REIMBURSEMENT.**

**01. Outpatient Hospital.** The Department will not pay more than the combined payments the provider is allowed to receive from the participants 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. (3-30-07)

**a.** Maximum payment for hospital outpatient diagnostic laboratory services will be limited to the Department's established fee schedule. (3-30-07)

**b.** Maximum payment for hospital outpatient partial care services will be limited to the Department's established fee schedule. (3-30-07)

**c.** Hospital-based ambulance services will be reimbursed at the lower of either the provider's actual charge for the service or the maximum allowable charge for the service as established by the Department in its pricing file. (3-30-07)

**d.** Hospital Outpatient Surgery. Those items furnished by a hospital to an outpatient in connection with Ambulatory Surgical Center must be surgical procedures covered by Idaho Medicaid. The aggregate amount of payments for related facility services, furnished in a hospital on an outpatient basis, is equal to the lesser of: (3-30-07)

**i.** The hospital's reasonable costs as reduced by federal mandates for certain operating costs, capital costs, customary hospital charges; or (3-30-07)

**ii.** The blended payment amount which is based on hospital specific cost and charge data and Medicaid rates paid to free-standing Ambulatory Surgical Centers (ASC); or (3-30-07)

**iii.** The blended rate of costs and the Department's fee schedule for ambulatory surgical centers at the time of cost settlement; or (3-30-07)

**iv.** The blended rate for outpatient surgical procedures is equal to the sum of forty-two percent (42%) of the hospital specific amount and fifty-eight percent (58%) of the ASC amount. (3-30-07)

**e.** Hospital Outpatient Radiology Services include diagnostic and therapeutic radiology, CAT scan procedures, magnetic resonance imaging, ultrasound and other imaging services. The aggregate payment for hospital outpatient radiology services furnished will be equal to the lesser of: (3-30-07)

**i.** The hospital's reasonable costs; or (3-30-07)

**ii.** The hospital's customary charges; or (3-30-07)

**iii.** The blended payment amount for hospital outpatient radiology equal to the sum of forty-two percent (42%) of the hospital specific amount and fifty-eight percent (58%) of the Department's fee schedule amount. (3-30-07)

**02. Reduction to Outpatient Hospital Costs.** ~~With the exception of Medicare designated sole community hospitals and rural primary care hospitals, all other hospital o~~ Outpatient costs not paid according to the Department's established fee schedule, including the hospital specific component used in the blended rates, will be reduced by five and eight-tenths percent (5.8%) of operating costs and ten percent (10%) of each hospital's capital costs component. This reduction will only apply to the following provider classes: ~~(3-30-07)(7-1-11-T)~~

**a.** In-state hospitals specified in Section 56-1408(2), Idaho Code, that are not a Medicare-designated sole community hospital or rural primary care hospital. (7-1-11-T)

**b.** Out-of-state hospitals that are not a Medicare-designated sole community hospital or rural primary care hospital. (7-1-11-T)

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1103**

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

**EFFECTIVE DATE:** The effective date of these temporary rules is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 56-203(7), 56-203(9), 56-250 through 56-257, 56-260 through 56-266, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

House Bill 260 passed by the 2011 Legislature, directed the Department to limit benefits for Medicaid eligible participants' dental services. Section 56-255(5)(c), Idaho Code, provides children access to prevention, diagnosis and treatment services defined in federal law. Adult coverage is limited to medically necessary services with the exception that pregnant women have access to dental services that reflect evidence-based practice. This rulemaking reflects changes needed to meet statutory requirements.

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

These rule changes implement statutory changes adopted by the 2011 Legislature effective July 1, 2011.

**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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

These rule changes are estimated to result in cost savings of \$2,101,600 (\$632,900 state funds, and \$1,468,700 federal funds) for state fiscal year 2012.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is in response to 2011 legislation.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

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

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 August 24, 2011.

DATED this 7th day of July, 2011.



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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0309-1103**

**399. COVERED SERVICES UNDER BASIC PLAN BENEFITS.**

Individuals who are eligible for Medicaid Basic Plan Benefits are eligible for the following benefits, subject to the coverage limitations contained in these rules. Those individuals eligible for services under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," are also eligible for the services covered under this chapter of rules, unless specifically exempted. (5-8-09)

**01. Hospital Services.** The range of hospital services covered is described in Sections 400 through 449 of these rules. (5-8-09)

**a.** Inpatient Hospital Services are described in Sections 400 through 406. (3-30-07)

**b.** Outpatient Hospital Services are described in Sections 410 through 416. (3-30-07)

**c.** Reconstructive Surgery services are described in Sections 420 through 426. (3-30-07)

**d.** Surgical procedures for weight loss are described in Sections 430 through 436. (3-30-07)

**e.** Investigational procedures or treatments are described in Sections 440 through 446. (3-30-07)

**02. Ambulatory Surgical Centers.** Ambulatory Surgical Center services are described in Sections 450 through 499 of these rules. (5-8-09)

**03. Physician Services and Abortion Procedures.** Physician services and abortion procedures are described in Sections 500 through 519 of these rules. (5-8-09)

**a.** Physician services are described in Sections 500 through 506. (3-30-07)

**b.** Abortion procedures are described in Sections 510 through 516. (3-30-07)

**04. Other Practitioner Services.** Other practitioner services are described in Sections 520 through 559 of these rules. (5-8-09)

**a.** Midlevel practitioner services are described in Sections 520 through 526. (3-30-07)

**b.** Chiropractic services are described in Sections 530 through 536. (3-30-07)

**c.** Podiatrist services are described in Sections 540 through 546. (3-30-07)

**d.** Optometrist services are described in Sections 550 through 556. (3-30-07)

- 05. Primary Care Case Management.** Primary Care Case Management services are described in Sections 560 through 569 of these rules. (5-8-09)
- 06. Prevention Services.** The range of prevention services covered is described in Sections 570 through 649 of these rules. (5-8-09)
- a.** Health Risk Assessment services are described in Sections 570 through 576. (3-30-07)
  - b.** Child wellness services are described in Sections 580 through 586. (3-30-07)
  - c.** Adult physical services are described in Sections 590 through 596. (3-30-07)
  - d.** Screening mammography services are described in Sections 600 through 606. (3-30-07)
  - e.** Diagnostic Screening Clinic services are described in Sections 610 through 616. (3-30-07)
  - f.** Preventive Health Assistance benefits are described in Sections 620 through 626. (5-8-09)
  - g.** Nutritional services are described in Sections 630 through 636. (3-30-07)
  - h.** Diabetes Education and Training services are described in Sections 640 through 646. (3-30-07)
- 07. Laboratory and Radiology Services.** Laboratory and radiology services are described in Sections 650 through 659 of these rules. (5-8-09)
- 08. Prescription Drugs.** Prescription drug services are described in Sections 660 through 679 of these rules. (5-8-09)
- 09. Family Planning.** Family planning services are described in Sections 680 through 689 of these rules. (5-8-09)
- 10. Substance Abuse Treatment Services.** Services for substance abuse treatment are described in Sections 690 through 699 of these rules. (5-8-09)
- 11. Mental Health Services.** The range of covered Mental Health services are described in Sections 700 through 719 of these rules. (5-8-09)
- a.** Inpatient Psychiatric Hospital services are described in Sections 700 through 706. (3-30-07)
  - b.** Mental Health Clinic services are described in Sections 707 through 718. (3-30-07)
- 12. Home Health Services.** Home health services are described in Sections 720 through 729 of these rules. (5-8-09)
- 13. Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are described in Sections 730 through 739 of these rules. (5-8-09)
- 14. Audiology Services.** Audiology services are described in Sections 740 through 749 of these rules. (5-8-09)
- 15. Durable Medical Equipment and Supplies.** The range of covered durable medical equipment and supplies is described in Sections 750 through 779 of these rules. (5-8-09)
- a.** Durable Medical Equipment and supplies are described in Sections 750 through 756. (3-30-07)
  - b.** Oxygen and related equipment and supplies are described in Sections 760 through 766. (3-30-07)

- c. Prosthetic and orthotic services are described in Sections 770 through 776. (3-30-07)
16. **Vision Services.** Vision services are described in Sections 780 through 789 of these rules. (5-8-09)
17. **Dental Services.** The dental services covered under the Basic Plan are covered under a selective contract as described in Section 800 through 819 of these rules. ~~(5-8-09)~~(7-1-11)T
18. **Essential Providers.** The range of covered essential services is described in Sections 820 through 859 of these rules. (5-8-09)
- a. Rural health clinic services are described in Sections 820 through 826. (3-30-07)
- b. Federally Qualified Health Center services are described in Sections 830 through 836. (3-30-07)
- c. Indian Health Services Clinic services are described in Sections 840 through 846. (3-30-07)
- d. School-Based services are described in Sections 850 through 856. (3-30-07)
19. **Transportation.** The range of covered transportation services is described in Sections 860 through 879 of these rules. (5-8-09)
- a. Emergency transportation services are described in Sections 860 through 866. (3-30-07)
- b. Non-emergency transportation services are described in Sections 870 through 876. (3-30-07)
20. **EPSDT Services.** EPSDT services are described in Sections 880 through 889 of these rules. (5-8-09)
21. **Specific Pregnancy-Related Services.** Specific pregnancy-related services are described in Sections 890 through 899 of these rules. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUB AREA: DENTAL SERVICES**  
**(Sections 800 -- 819)**

**800. DENTAL SERVICES: SELECTIVE CONTRACT FOR DENTAL COVERAGE ~~UNDER THE BASIC PLAN.~~**

All participants who are eligible for Medicaid's Basic Plan dental benefits are covered under a selective contract for a dental insurance program called Idaho Smiles. (7-1-11)T

~~01. **Dental Coverage Under the Selective Contract.** Children and adults under the Medicaid Basic Plan, including pregnant women in the Low Income Pregnant Women coverage group, are covered under a selective contract with Blue Cross of Idaho for preventative dental visits, treatments, and restorative services. For more details on covered dental services go to [http://www.bcidaho.com/about\\_us/idaho\\_smiles.asp](http://www.bcidaho.com/about_us/idaho_smiles.asp). (5-8-09)~~

~~02. **Limitations on Orthodontics.** Orthodontics are limited to participants from birth to twenty one (21) years of age who meet the eligibility requirements, and the Idaho Medicaid Handicapping Malocclusion Index as evaluated by the state Medicaid dental consultant. The Malocclusion Index may be found in the Appendix A of these rules. (5-8-09)~~

**801. DENTAL SERVICES: DEFINITIONS.**

For the purposes of dental services covered in Sections 800 through 807 of these rules, the following definitions

apply: (7-1-11)T

**01. Adult.** A person who is past the month of his twenty-first birthday. (7-1-11)T

**02. Child.** A person from birth through the month of his twenty-first birthday. (7-1-11)T

**03. Idaho Smiles.** A dental insurance program provided to eligible Medicaid participants through a selective contract between the Department and a dental insurance carrier. (7-1-11)T

**04. Medicare/Medicaid Coordinated Plan (MMCP).** Medical assistance in which Medicaid purchases services from a Medicare Advantage Organization (MAO) and provides other Medicaid-only services covered under the Medicaid Basic Plan in accordance with IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits." (7-1-11)T

**802. DENTAL SERVICES: PARTICIPANT ELIGIBILITY.**

Children, adults, and pregnant women on Medicaid's Pregnant Woman (PW) Program who meet the eligibility criteria for Medicaid's Basic Plan are eligible for Idaho Smiles dental benefits described in Section 803 of these rules. Participants who are over age twenty-one (21), who are eligible for both Medicare A and Medicare B, and who have chosen to enroll in a Medicare/Medicaid Coordinated Plan (MMCP) under IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits," Section 100, receive dental benefits from the MMCP insurance carrier and not from Idaho Smiles. (7-1-11)T

**803. DENTAL SERVICES: COVERAGE AND LIMITATIONS.**

Some covered dental services may require authorization from the Idaho Smiles contractor. (7-1-11)T

**01. Dental Coverage for Children.** Children are covered for dental services that include: (7-1-11)T

**a. Preventative and problem-focused exams, diagnostic, restorative, endodontic, periodontic, prosthodontic, and orthodontic treatments, dentures, crowns and oral surgery;** (7-1-11)T

**b. Other dental services that are determined medically necessary by the Department, as required by the Early and Periodic Screening and Diagnostic Testing (EPSDT) guidelines specified in Section 1905(r) of the Social Security Act, are also covered.** (7-1-11)T

**02. Children's Orthodontics Limitations.** Orthodontics are limited to children who meet the Basic Plan eligibility requirements, and the Idaho Medicaid Handicapping Malocclusion Index as evaluated by the state Medicaid dental consultant and the dental insurance contractor's dental consultant. The Malocclusion Index is found in Appendix A of these rules. (7-1-11)T

**03. Dental Coverage and Limitations for Adults.** Adults who are not pregnant are limited to the dental services coverage using the Current Dental Terminology (CDT) codes listed in the following table:

<b><u>TABLE 803.03 - ADULT DENTAL SERVICES CODES</u></b>	
<b><u>Dental Code</u></b>	<b><u>Description</u></b>
<u>D0140</u>	<u>Limited oral evaluation. Problem focused</u>
<u>D0220</u>	<u>Intraoral periapical film</u>
<u>D0230</u>	<u>Additional intraoral periapical films</u>
<u>D0330</u>	<u>Panoramic film</u>
<u>D7140</u>	<u>Extraction</u>
<u>D7210</u>	<u>Surgical removal of erupted tooth</u>
<u>D7220</u>	<u>Removal of impacted tooth, soft tissue</u>

<b>TABLE 803.03 - ADULT DENTAL SERVICES CODES</b>	
<b>Dental Code</b>	<b>Description</b>
<a href="#">D7230</a>	<a href="#">Removal of impacted tooth, partially bony</a>
<a href="#">D7240</a>	<a href="#">Removal of impacted tooth, completely bony</a>
<a href="#">D7241</a>	<a href="#">Removal of impacted tooth, with complications</a>
<a href="#">D7250</a>	<a href="#">Surgical removal of residual tooth roots</a>
<a href="#">D7260</a>	<a href="#">Oroantral fistula closure</a>
<a href="#">D7261</a>	<a href="#">Primary closure of sinus perforation</a>
<a href="#">D7285</a>	<a href="#">Biopsy of hard oral tissue</a>
<a href="#">D7286</a>	<a href="#">Biopsy of soft oral tissue</a>
<a href="#">D7450</a>	<a href="#">Excision of malignant tumor &lt;1.25 cm</a>
<a href="#">D7451</a>	<a href="#">Excision of malignant tumor &gt;1.25 cm</a>
<a href="#">D7510</a>	<a href="#">Incision and drainage of abscess</a>
<a href="#">D7511</a>	<a href="#">Incision and drainage of abscess, complicated</a>
<a href="#">D9110</a>	<a href="#">Minor palliative treatment of dental pain</a>
<a href="#">D9220</a>	<a href="#">Deep sedation/anesthesia first 30 minutes</a>
<a href="#">D9221</a>	<a href="#">Regional block anesthesia</a>
<a href="#">D9230</a>	<a href="#">Analgesia, anxiolysis, nitrous oxide</a>
<a href="#">D9241</a>	<a href="#">IV conscious sedation first 30 minutes</a>
<a href="#">D9242</a>	<a href="#">IV conscious sedation each additional 15 minutes</a>
<a href="#">D9248</a>	<a href="#">Non IV conscious sedation</a>
<a href="#">D9420</a>	<a href="#">Hospital call</a>
<a href="#">D9610</a>	<a href="#">Therapeutic parenteral drug single administration</a>
<a href="#">D9630</a>	<a href="#">Other drugs and/or medicaments by report</a>

(7-1-11)T

**04. Dental Coverage for Pregnant Women.** Pregnant women on Medicaid's Basic, Enhanced, or PW plans are covered for preventative and problem-focused exams, diagnostic, restorative, endodontic, periodontic, and oral surgery benefits. Specific information about pregnant women is available online at dental services. (7-1-11)T

**05. Benefit Limitations.** The dental insurance contractor may establish limitations and restrictions for benefits according to the terms of its contract with the Department. (7-1-11)T

**804. DENTAL SERVICES: PROCEDURAL REQUIREMENTS.** Providers must enroll in the Idaho Smiles network with the dental insurance contractor and meet both credentialing and quality assurance guidelines of the contractor. (7-1-11)T

**01. Administer Idaho Smiles.** The contractor is responsible for administering the Idaho Smiles program, including but not limited to dental claims processing, payments to providers, customer service, eligibility verification, and data reporting. (7-1-11)T

**02. Authorization.** The contractor is responsible for authorization of covered dental services that

require authorization prior to claim payment.

(7-1-11)T

**03. Complaints and Appeals.** Complaints and appeals are handled through a process between Idaho Smiles and the Department that is in compliance with state and federal requirements.

(7-1-11)T

**805. DENTAL SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

Providers are credentialed by the contractor to ensure they meet licensing requirements of the Idaho Board of Dentistry standards. Providers' duties are based on the contract requirements and are monitored and enforced by the contractor.

(7-1-11)T

**806. DENTAL SERVICES: PROVIDER REIMBURSEMENT.**

The Idaho Smiles administrator reimburses dental providers on a fee-for-service basis under a Department approved fee schedule.

(7-1-11)T

**807. DENTAL SERVICES: QUALITY ASSURANCE.**

Providers are subject to the contractor's Quality Assurance guidelines including monitoring for potential fraud, overutilization, or abuse of Medicaid. The contractor is required to share such potential cases with the Medicaid Fraud Unit as discovered.

(7-1-11)T

**807.8. -- 819. (RESERVED)**

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1104**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code, and House Bill 260 (2011) codified in Sections 56-255, 56-257, and 56-260 through 56-266, Idaho Code, as amended.

**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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule changes are needed to continue cost saving measures begun during SFY 2011, as well as align the rules with House Bill 260 passed by the 2011 Legislature, and codified in Sections 56-255, 56-257, and 56-260 through 56-266, Idaho Code, as amended.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, in particular, House Bill 260 (2011).

**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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The estimated cost savings for these rule changes are as follows: \$347,000 to continue cost saving measures begun in SFY 2011. In addition, under HB 260: \$200,000 - chiropractic; \$70,000 - audiology; and \$800,000 - podiatry and vision.

The total estimated cost savings for SFY 2012 to the state general fund for these rule changes is: \$1,417,000 and was included in the Department's appropriations for SFY 2012.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to bring this chapter of rules into compliance with House Bill 260 (2011).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Paul Leary at (208) 364-1836.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 8th day of July, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0309-1104**

**010. DEFINITIONS: A THROUGH H.**

For the purposes of these rules, the following terms are used as defined below: (3-30-07)

- 01. AABD.** Aid to the Aged, Blind, and Disabled. (3-30-07)
- 02. Abortion.** The medical procedure necessary for the termination of pregnancy endangering the life of the woman, or the result of rape or incest, or determined to be medically necessary in order to save the health of the woman. (3-30-07)
- 03. Amortization.** The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (3-30-07)
- 04. Ambulatory Surgical Center (ASC).** Any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and which is certified by the U.S. Department of Health and Human Services as an ASC. (3-30-07)
- 05. Audit.** An examination of provider records on the basis of which an opinion is expressed representing the compliance of a provider's financial statements and records with Medicaid law, regulations, and rules. (3-30-07)
- 06. Auditor.** The individual or entity designated by the Department to conduct the audit of a provider's records. (3-30-07)
- 07. Audit Reports.** (3-30-07)
- a.** Draft Audit Report. A preliminary report of the audit finding sent to the provider for the provider's review and comments. (3-30-07)
- b.** Final Audit Report. A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. (3-30-07)
- c.** Interim Final Audit Report. A written report containing the results, findings, and recommendations, if any, from the audit of the provider, sent to the Department by the auditor. (3-30-07)
- 08. Bad Debts.** Amounts due to provider as a result of services rendered, but which are considered uncollectible. (3-30-07)
- 09. Basic Plan.** The medical assistance benefits included under this chapter of rules. (3-30-07)



**10. Buy-In Coverage.** The amount the State pays for Part B of Title XVIII of the Social Security Act on behalf of the participant. (3-30-07)

**11. Certified Registered Nurse Anesthetist (CRNA).** A Registered Nurse qualified by advanced training in an accredited program in the specialty of nurse anesthesia to manage the care of the patient during the administration of anesthesia in selected surgical situations. (3-30-07)

**12. Claim.** An itemized bill for services rendered to one (1) participant by a provider and submitted to the Department for payment. (3-30-07)

**13. CFR.** Code of Federal Regulations. (3-30-07)

**14. Clinical Nurse Specialist.** A licensed professional nurse who meets all the applicable requirements to practice as clinical nurse specialist under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-30-07)

**15. CMS.** Centers for Medicare and Medicaid Services. (3-30-07)

~~**16. Collateral Contact.** Coordination of care communication that is initiated by a medical or qualified treatment professional with members of a participant's interdisciplinary team or consultant to the interdisciplinary team. The communication is limited to interpretation or explanation of results of psychiatric or other medical examinations and procedures or other accumulated data to family or responsible persons or advising them how to assist participant. Collateral contact is used to:~~ (5-8-09)

~~**a.** Coordinate care between professionals who are serving the participant;~~ (5-8-09)

~~**b.** Relay medical results and explanations to members of the participant's interdisciplinary team; or~~ (5-8-09)

~~**e.** Conduct an intermittent treatment plan review with the participant and his interdisciplinary team.~~ (5-8-09)

~~**17.** Co-Payment.~~ The amount a participant is required to pay to the provider for specified services. (3-30-07)

~~**18.** Cost Report.~~ A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-30-07)

~~**19.** Customary Charges.~~ Customary charges are the rates charged to Medicare participants and to patients liable for such charges, as reflected in the facility's records. Those charges are adjusted downward, when the provider does not impose such charges on most patients liable for payment on a charge basis or, when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt as described in Chapter 3, Sections 310 and 312, PRM. (3-30-07)

~~**20.** Department.~~ The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (3-30-07)

~~**21.** Director.~~ The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)

~~**22.** Dual Eligibles.~~ Medicaid participants who are also eligible for Medicare. (3-30-07)

~~**23.** Durable Medical Equipment (DME).~~ Equipment other than prosthetics or orthotics that can withstand repeated use by one (1) or more individuals, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a Medicaid participant. (5-8-09)

**243. Emergency Medical Condition.** A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following: (3-30-07)

a. Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy. (3-30-07)

b. Serious impairment to bodily functions. (3-30-07)

c. Serious dysfunction of any bodily organ or part. (3-30-07)

**254. EPSDT.** Early and Periodic Screening, Diagnosis, and Treatment. (3-30-07)

**265. Facility.** Facility refers to a hospital, nursing facility, or intermediate care facility for people with intellectual disabilities. (3-30-07)

**276. Federally Qualified Health Center (FQHC).** An entity that meets the requirements of 42 U.S.C Section 1395x(aa)(4). The FQHC may be located in either a rural or urban area designated as a shortage area or in an area that has a medically underserved population. (3-30-07)

**287. Fiscal Year.** An accounting period that consists of twelve (12) consecutive months. (3-30-07)

**298. Forced Sale.** A forced sale is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner that requires ownership transfer to an existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (3-30-07)

**3029. Healthy Connections.** The primary care case management model of managed care under Idaho Medicaid. (3-30-07)

**340. Home Health Services.** Services ordered by a physician and performed by a licensed nurse, registered physical therapist, or home health aide as defined in IDAPA 16.03.07, "Rules for Home Health Agencies." (3-30-07)

**321. Hospital.** A hospital as defined in Section 39-1301, Idaho Code. (3-30-07)

**332. Hospital-Based Facility.** A nursing facility that is owned, managed, or operated by, or is otherwise a part of a licensed hospital. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**532. CHIROPRACTIC SERVICES: COVERAGE AND LIMITATIONS.**

Only treatment involving manipulation of the spine to correct a subluxation condition is covered. The Department will pay for a total of ~~twenty-four~~ six (246) manipulation visits during any calendar year for remedial care by a chiropractor ~~but only for treatment involving manipulation of the spine to correct a subluxation condition.~~

~~(3-30-07)~~ (7-1-11)T

**533. (RESERVED)**

**534. CHIROPRACTIC SERVICES: PROVIDER QUALIFICATIONS.**

A person who is qualified to provide chiropractic services is licensed by the Board of Chiropractic Physicians in the Idaho Board of Occupational Licensing, or is licensed according to the regulations in the state where the services are

provided. (7-1-11)T

~~533~~5. -- 539. (RESERVED)

**540. PODIATRIST SERVICES: DEFINITIONS.**

*The Department will reimburse podiatrists for treatment of acute foot conditions.* (3-30-07)

**01. Acute Foot Conditions.** An acute foot condition, for the purpose of this provision, means any condition that hinders normal function, threatens the individual, or complicates any disease. ~~Preventive foot care may be provided if vascular restrictions or other systemic disease is threatened.~~ (3-30-07)(7-1-11)T

**02. Chronic Foot Diseases.** Chronic foot diseases, for the purpose of this provision, include: (7-1-11)T

**a.** Diabetes melitus; (7-1-11)T

**b.** Peripheral neuropathy involving the feet; (7-1-11)T

**c.** Chronic thrombophlebitis; and (7-1-11)T

**d.** Peripheral vascular disease; (7-1-11)T

**e.** Other chronic conditions that require regular podiatric care for the purpose of preventing recurrent wounds, pressure ulcers, or amputation; or (7-1-11)T

**f.** Other conditions that have the potential to seriously or irreversibly compromise overall health. (7-1-11)T

**541. PODIATRIST SERVICES: PARTICIPANT ELIGIBILITY.**

Participants eligible for podiatrist services are: (7-1-11)T

**01. Participants Who Have a Chronic Disease.** Participants who have a chronic disease where the evidence-based guidelines recommend regular foot care. (7-1-11)T

**02. Participants with an Acute Condition.** Participants with an acute condition that, if left untreated, may cause an adverse outcome to the participant's health. (7-1-11)T

**542. PODIATRIST SERVICES: COVERAGE AND LIMITATIONS.**

Coverage for podiatrist services is limited to: (7-1-11)T

**01. Services Defined in Chronic Care Guidelines.** Acute and preventive foot care services defined in chronic care guidelines; and (7-1-11)T

**02. Treatment of Acute Conditions.** Treatment of acute conditions that if left untreated will result in chronic damage to the participant's foot. (7-1-11)T

**543. (RESERVED)**

**544. PODIATRIST SERVICES: PROVIDER QUALIFICATIONS.**

A qualified podiatrist is licensed by the Board of Podiatry in the Idaho Board of Occupational Licensing, or licensed according to the regulations in the state where the services are provided. (7-1-11)T

~~544~~5. -- 553. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

**562. HEALTHY CONNECTIONS: COVERAGE AND LIMITATIONS.**

- 01. Exempted Services.** All services are subject to primary care case management unless specifically exempted. The following services are exempt: (3-30-07)
- a.** Family planning services; (3-30-07)
  - b.** Emergency care (as defined by the Department for the purpose of payment and performed in an emergency department); (3-30-07)
  - c.** Dental care; (4-2-08)
  - d.** Podiatry (performed in the office); (3-30-07)
  - e.** Audiology (hearing tests or screening, does not include ear/nose/throat services); (3-30-07)
  - f.** Optical/Ophthalmology/Optomist services (performed in the office); (3-30-07)
  - g.** Chiropractic (performed in the office); (3-30-07)
  - h.** Pharmacy (prescription drugs only); (3-30-07)
  - i.** Nursing home; (3-30-07)
  - j.** ICF/ID services; (3-30-07)
  - k.** Immunizations (not requiring an office visit); (4-2-08)
  - l.** Flu shots and/or pneumococcal vaccine (not requiring an office visit); (3-30-07)
  - m.** Diagnosis and/or treatment for sexually transmitted diseases; (3-30-07)
  - n.** One screening mammography per calendar year for women age forty (40) or older; (3-30-07)
  - o.** Indian Health Clinic/638 Clinic services provided to individuals eligible for Indian Health Services; (4-2-08)
  - p.** In-home services, known as Personal Care Services and Personal Care Services Case Management; (4-2-08)
  - q.** Laboratory services, including pathology; (4-2-08)
  - r.** Anesthesiology services; and (4-2-08)
  - s.** Radiology services. (4-2-08)
  - t.** Services rendered at an Urgent Care Clinic when the participant's PCP's office is closed. (7-1-11)T
- 02. Change in Services That Require a Referral.** The Department may change the services that require a referral after appropriate notification of Medicaid eligible individuals and providers. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**565. HEALTHY CONNECTIONS: PROVIDER REIMBURSEMENT.**

- 01. Case Management Fee.** Reimbursement is as follows: (4-2-08)
- a.** PCPs will be paid a case management fee for primary care case management services based on the level of participants' health care needs and the PCP's availability. ~~(4-2-08)~~(7-1-11)T
  - b.** PCPs enrolled in the chronic disease management pay-for-performance program will be paid an enhanced case management fee. (4-2-08)
  - c.** The amount of the fees is determined by the Department ~~and specified in the provider agreement.~~ ~~(4-2-08)~~(7-1-11)T
  - d.** The amount of the fee is fixed and the same for all participating PCPs. (4-2-08)
- 02. Primary Care Case Management.** Reimbursement is based on: ~~the number of participants enrolled under the provider on the first day of each month multiplied by the amount of the case management fee.~~ ~~(4-2-08)~~(7-1-11)T
- a.** The number of participants enrolled under the provider on the first day of each month multiplied by the amount of the case management fee established for participants enrolled in the Basic Plan Benefit package; (7-1-11)T
  - b.** The number of participants enrolled under the provider on the first day of each month multiplied by the amount of the case management fee established for participants enrolled in the Enhanced Plan Benefit package; and (7-1-11)T
  - c.** The amount of the case management fee is increased by fifty cents (\$.50) per participant when the PCP's office offers extended hours of service equal to or exceeding forty-six (46) hours per week. The amount of extended hours must be verified by and on file with the Department prior to monthly case management fee generation for the increase to be paid. (7-1-11)T
- 03. Chronic Disease Management.** Reimbursement is based on: (4-2-08)
- a.** The number of participants who have a targeted chronic disease multiplied by the amount of the enhanced case management fee for patient identification; and (4-2-08)
  - b.** The number of instances that the PCP achieved Department specified best practices protocol for the disease being managed multiplied by the amount of the enhanced case management fee for reported quality indicators. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**615. ADDITIONAL ASSESSMENT AND EVALUATION SERVICES.**

In addition to evaluations for services as defined in this Chapter, the Department will reimburse for the following evaluations if needed to determine eligibility for Medicaid Enhanced Plan Benefits. (3-30-07)

**01. Enhanced Mental Health Services.** Enhanced mental health services are not covered under the Basic Plan with the exception of assessment services. The assessment for determination of need for enhanced mental health services is subject to the requirements for comprehensive assessments at IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 11~~34~~, and provider qualifications under Section 715 of these rules and under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 130 and 131. ~~(3-30-07)~~(7-1-11)T

**02. Developmental Disability Agency Services (DDA).** DDA services are not covered under the Basic Plan with the exception of assessment and evaluation services. The assessment and/or evaluation for the need

for DDA services is subject to the requirements for DDA services under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 653.02, and IDAPA 16.04.11, "Developmental Disabilities Agencies," Sections 600 through 604. (3-30-07)

**03. Service Coordination Services.** Service coordination services are not covered under the Basic Plan, with the exception of assessment services. The assessment for the need for service coordination services is subject to the requirements for service coordination under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 727.03, as applicable to the service being requested, and provider qualifications under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 729. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**707. MENTAL HEALTH CLINIC SERVICES: DEFINITIONS.**

**01. Adult.** An adult is an individual who is eighteen (18) years of age or older for the purposes of Mental Health Clinic and other outpatient mental health services. (5-8-09)

**02. Comprehensive Diagnostic Assessment.** A thorough assessment of the participant's current condition and complete medical and psychiatric history. (5-8-09)

**03. ~~Functional Assessment.~~** ~~In rehabilitative mental health, this assessment is used to provide supplemental information to the comprehensive diagnostic assessment and provides information on the current or required capabilities needed by a participant to maintain himself in his chosen environment. It is a description and evaluation of the participant's practical ability to complete tasks that support activities of daily living, family life, life in the community, and promote independence. This assessment assists participants to better understand what skills they need to achieve their rehabilitation goals.~~ **Comprehensive Diagnostic Assessment Addendum.** A supplement to the comprehensive diagnostic assessment that contains updated information relevant to the formulation of a participant's diagnosis and disposition for treatment. (5-8-09)(7-1-11)T

**04. ~~Intake Assessment.~~** ~~An agency's initial assessment of the participant that is conducted by an agency staff person who has been trained to perform mental status examinations and solicit sensitive health information for the purpose of identifying service needs prior to developing an individualized treatment plan. The intake assessment must contain a description of the reason(s) the participant is seeking services and a description of the participant's current symptoms, present life circumstances across all environments, recent events, resources, and barriers to mental health treatment. If this is the initial screening process, then it must be used to document the indicators that mental health services are a medical necessity for the participant.~~ (5-8-09)

**054. Interdisciplinary Team.** Group that consists of two (2) or more individuals in addition to the participant, the participant's parent or legal guardian, and the participant's natural supports. This may include professionals from several fields or professions. Team members combine their skills and resources to provide guidance and assistance in the creation of the participant's treatment plan. Professionals working with the participant to fulfill the goals and objectives on the treatment plan are members of the participant's interdisciplinary team whether they attend treatment plan meetings or not. At a minimum, professional members of the team include the medical professional authorizing the treatment plan and the specific agency staff member who is working with the participant. (5-8-09)

**065. Level of Care.** Clinical treatment decisions that determine service site, modality, urgency, and specific interventions needed to address the key presenting signs, symptoms, and environmental factors that indicate the severity of illness and the intensity of service needed by the participant. It also takes into account relevant external factors affecting clinical treatment decisions. (5-8-09)

**076. Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. The nurse practitioner and clinical nurse specialist must have experience prescribing medications for psychiatric disorders. (5-8-09)

**087. Mental Health Clinic.** A mental health clinic, also referred to as “agency,” must be a proprietorship, partnership, corporation, or other entity, in a distinct location, employing at least two (2) staff qualified to deliver clinic services under this rule and operating under the direction of a physician. (3-30-07)

**098. Neuropsychological Testing.** Assessment of brain functioning through structured and systematic behavioral observation. Neuropsychological tests are designed to examine a variety of cognitive abilities, including speed of information processing, attention, memory, language, and executive functions, which are necessary for goal-directed behavior. These data can provide information leading to the diagnosis of a cognitive deficit or to the confirmation of a diagnosis, as well as to the localization of organic abnormalities in the central nervous system; the data can also guide effective treatment methods for the rehabilitation of impaired participants. (5-8-09)

**09. New Participant.** A participant is considered “new” if he has not received Medicaid-reimbursable mental health clinic or psychosocial rehabilitation services (PSR) in the twelve (12) months prior to the current treatment episode. (7-1-11)T

**10. Objective.** A milestone toward meeting the goal that is concrete, measurable, time-limited, and identifies specific behavior changes. (5-8-09)

**11. Occupational Therapy.** For the purposes of mental health treatment, the use of purposeful, goal-oriented activity to achieve optimum functional performance and independence, prevent further disability, and maintain health with individuals who are limited by the symptoms of their mental illness. (5-8-09)

**12. Pharmacological Management.** The in-depth management of medications for psychiatric disorders for relief of a participant’s signs and symptoms of mental illness, provided by a licensed practitioner of the healing arts. (5-8-09)

**13. Psychiatric Nurse, Licensed Master's Level.** A certified psychiatric nurse, Clinical Nurse Specialist or Psychiatric Nurse Practitioner, must be licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. (3-30-07)

**14. Psychological Testing.** Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of an examinee's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses or functional impairments. (3-30-07)

**15. Psychotherapy.** A method of treating and managing psychiatric disorders through the use of evidenced-based psychological treatment modalities that match the participant’s ability to benefit from the service. The focus of the service is on behavioral, emotional, and cognitive aspects of a participant’s functioning. (5-8-09)

**16. Restraints.** Restraints include the use of physical, mechanical, or chemical interventions, or other means to temporarily subdue or modify participant behavior. (5-8-09)

**a.** A restraint includes: (5-8-09)

**i.** Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a participant to move his arms, legs, body, or head freely; or (5-8-09)

**ii.** A drug or medication when it is used as a restriction to manage the participant’s behavior or restrict the participant’s freedom of movement and is not a standard treatment or dosage for the participant’s condition; (5-8-09)

**b.** A restraint does not include physical escorts or devices, such as orthopedically prescribed devices, to permit the participant to engage in activities without the risk of physical harm. (5-8-09)

**17. Seclusion.** Seclusion is the involuntary confinement of a participant alone in a room or area from

which the participant is prevented from leaving. (5-8-09)

**18. Serious Emotional Disturbance (SED).** In accordance with the Children's Mental Health Services Act, Section 16-2403, Idaho Code, SED is: (5-8-09)

**a.** An emotional or behavioral disorder according to the DSM-IV-TR, which results in a serious disability; and (5-8-09)

**b.** Requires sustained treatment interventions; and (5-8-09)

**c.** Causes the child's functioning to be impaired in thought, perception, affect, or behavior. (5-8-09)

**d.** A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (5-8-09)

**19. Serious Mental Illness (SMI).** In accordance with 42 CFR 483.102(b)(1), a person with SMI: (5-8-09)

**a.** Currently or at any time during the year, must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-IV-TR; and (5-8-09)

**b.** Must have a functional impairment which substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. Instrumental living skills include maintaining a household, managing money, getting around the community, and taking prescribed medication. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. (5-8-09)

**20. Serious and Persistent Mental Illness (SPMI).** Participants must meet the criteria for SMI, have at least one (1) additional functional impairment, and have a diagnosis under DSM-IV-TR with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. (5-8-09)

**21. Treatment Plan Review.** The practice of obtaining input from members of a participant's interdisciplinary team that is focused on evaluating the programs, progress, and future plans of a participant. This review should provide feedback and suggestions intended to help team members and the participant to accomplish the goals identified on the participant's individualized treatment plan. (5-8-09)

**708. MENTAL HEALTH CLINIC SERVICES: PARTICIPANT ELIGIBILITY.**

Eligibility must be established through the assessment services described under Subsections 709.03.a. and 709.03.b. of these rules. The following are requirements for establishing eligibility for mental health clinic services. (5-8-09)

**01. History and Physical Examination.** The participant must have documented evidence of a history and physical examination that has been completed by his primary care physician. This examination must be within the last twelve (12) months immediately preceding the initiation of mental health clinic services and annually thereafter. Providers must refer those participants who have not had a history and physical examination to their primary care provider for this service prior to the delivery of mental health services. A participant who is in crisis may receive mental health services as described under Subsection 709.06 of these rules prior to obtaining a history and physical examination. (5-8-09)

**02. Healthy Connections Referral.** A participant who belongs to the Healthy Connections program must be referred to the mental health clinic by his Healthy Connections physician. (5-8-09)



**03. Establishment of Service Needs.** The initial assessment of the participant must establish that the services requested by the participant or his legal guardian are therapeutically appropriate and can be provided by the clinic. (5-8-09)

**04. Conditions That Require New *Intake* Assessment and Individualized Treatment Plan.** If an individual who is not eligible for Medicaid receives *intake assessment* services from any staff who does not have the qualifications required under Subsection 715.03 of these rules, and later becomes eligible for Medicaid, a new *intake comprehensive diagnostic* assessment and individualized treatment plan are required, which must be developed by a professional listed under Subsection 715.03 of these rules. ~~(5-8-09)~~(7-1-11)T

**709. MENTAL HEALTH CLINIC SERVICES: COVERAGE AND LIMITATIONS.**

All mental health clinic services must be provided at the clinic unless provided to an eligible homeless individual. (3-30-07)

**01. Clinic Services -- Mental Health Clinics (MHC).** Under 42 CFR 440.90, the Department will pay for preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services provided by a mental health clinic to a participant who is not an inpatient in a hospital or nursing home or correctional facility except as specified under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 229. (3-30-07)

**02. Services or Supplies in Mental Health Clinics That Are Not Reimbursed.** Any service or supplies not included as part of the allowable scope of Medicaid. (5-8-09)

**03. Evaluation and Diagnostic Services in Mental Health Clinics.** Participants must obtain *either an intake assessment or* a comprehensive diagnostic assessment as the initial evaluation in mental health clinics; *depending on their clinical presentation.* ~~(5-8-09)~~(7-1-11)T

*a. An intake assessment is a reimbursable evaluation service when the following conditions are met:* (5-8-09)

*i. The intake assessment must be conducted by staff trained to perform mental status examinations and to conduct interviews intended to solicit sensitive health information for the purpose of identifying a participant's treatment needs and developing an individualized treatment plan.* (5-8-09)

*ii. The intake assessment must be documented in the participant's medical record and must contain a current mental status examination and a review of the participant's strengths and needs.* (5-8-09)

*ba. The comprehensive diagnostic assessment must incorporate information typically gathered in an intake assessment process if an intake assessment has not been completed by the provider agency conducting the comprehensive diagnostic assessment.* The comprehensive diagnostic assessment must include a current mental status examination, a description of the participant's readiness and motivation to engage in treatment, participate in the development of his treatment plan and adhere to his treatment plan. The assessment must include the five (5) axes diagnoses under DSM-IV-TR with recommendations for level of care, intensity, and expected duration of treatment services. A comprehensive diagnostic assessment is a reimbursable service when: ~~(5-8-09)~~(7-1-11)T

*i. A comprehensive diagnostic assessment is medically necessary in order to provide Basic Plan mental health services and staff determines that the intake assessment does not provide sufficient clinical information;* ~~(5-8-09)~~(7-1-11)T

*ii. The participant is seeking Enhanced Plan services; or and* ~~(5-8-09)~~(7-1-11)T

*iii. When the assessment is performed by qualified staff identified under Subsection 715.02 of these rules.* (5-8-09)

*e. Functional assessment is a reimbursable evaluation service when the comprehensive diagnostic evaluation indicates that the participant may benefit from rehabilitative skill training. A functional assessment must be conducted by a qualified staff person capable of assessing a participant's strengths and needs. The functional assessment must describe and evaluate the participant's practical ability to complete tasks that support activities of*

~~daily living, family life, life in the community, and that promote independence.~~ (5-8-09)

**4b.** Psychological testing may be provided as a reimbursable service when provided in direct response to a specific evaluation question. The psychological report must contain the reason for the performance of this service. Agency staff may deliver this service if they meet one (1) of the following qualifications: (5-8-09)

- i. Licensed Psychologist; (3-30-07)
- ii. Psychologist extenders as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners"; or (3-30-07)
- iii. A qualified therapist listed in Subsection 715.03 of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. (3-30-07)

**4c.** Neuropsychological testing may be provided as a reimbursable service when provided in direct response to a specific evaluation question for participants whose clinical presentation indicates possible neurological involvement or central nervous system compromise from either a congenital or acquired etiology impacting the individual's functional capacities. The neuropsychological evaluation report must contain the reason for the performance of this service. Agency staff may deliver this service if they are a licensed psychologist or psychologist extender with specific competencies in neuropsychological testing. (5-8-09)

**4d.** Occupational therapy assessment may be provided as a reimbursable service when recommended by the treatment team. This service may include the administration of standardized and non-standardized assessments and must be provided by an occupational therapist licensed in accordance with IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants." (5-8-09)

**04. Psychotherapy Treatment Services in Mental Health Clinics.** Individual and group psychotherapy must be provided in accordance with the goals specified in the individualized treatment plan as described in Section 710 of these rules. (5-8-09)

**05. Family Psychotherapy.** Family psychotherapy services must be delivered in accordance with the goals of treatment as specified in the individualized treatment plan. The focus of family psychotherapy is on the dynamics within the family structure as it relates to the participant. (5-8-09)

- a.** Family psychotherapy services with the participant present must: (5-8-09)
    - i. Be face-to-face with at least one (1) family member present in addition to the participant; (5-8-09)
    - ii. Focus the treatment services on goals identified in the participant's individualized treatment plan; (5-8-09)
- and
- iii. Utilize an evidence-based treatment model. (5-8-09)
- b.** Family psychotherapy without the participant present must: (5-8-09)
    - i. Be face-to-face with at least one (1) family member present; (5-8-09)
    - ii. Focus the services on the participant; and (5-8-09)
    - iii. Utilize an evidence-based treatment model. (5-8-09)

**06. Emergency Psychotherapy Services.** Individual emergency psychotherapy services can be provided by qualified clinic staff at any time. (5-8-09)

**a.** Emergency services provided to an eligible participant prior to ~~intake and evaluation is a reimbursable service but~~ the completion of a comprehensive diagnostic assessment must be fully documented in the

participant's medical record; and

~~(5-8-09)~~(7-1-11)T

b. Each emergency service will be counted as a unit of service and part of the allowable limit per participant unless the contact results in hospitalization. Provider agencies may submit claims for the provision of psychotherapy in emergency situations even when contact does not result in the hospitalization of the participant. (3-30-07)

~~07. Collateral Contact. Collateral contact, as defined in Section 010 of these rules, is a reimbursable service when it is included on the individualized treatment plan and it is necessary for professional staff to share information with members of the participant's interdisciplinary team, or advise them how to assist the participant. (5-8-09)~~

~~a. Collateral contact can be provided face-to-face by agency staff providing treatment services. Face-to-face contact is defined as two (2) or more people meeting in person at the same time. (5-8-09)~~

~~b. Collateral contact can be provided by telephone by agency staff providing treatment services when this is the most expeditious and effective way to provide information. (5-8-09)~~

~~08. Pharmacological Management.~~ Pharmacological management is a reimbursable service when consultations are provided by a physician or other practitioner of the healing arts within the scope of practice defined in their license in direct contact with the participant. (5-8-09)

a. Consultation must be for the purpose of prescribing, monitoring, and/or administering medication as part of the participant's individualized treatment plan; and (5-8-09)

b. Pharmacological management, if provided, must be specified on the participant's individualized treatment plan and must include the frequency and duration of the treatment. (5-8-09)

~~09. Nursing Services.~~ Nursing services are reimbursable when physician ordered and supervised, and included as part of the participant's individualized treatment plan. (5-8-09)

a. Licensed and qualified nursing personnel can supervise, monitor, and administer medication within the limits of the Nursing Practice Act, Section 54-1402, Idaho Code; and (3-30-07)

b. The frequency and duration of the treatment must be specified on the participant's individualized treatment plan. (3-30-07)

~~10. Limits on Mental Health Clinic Services.~~ Services provided by Mental Health Clinics are limited to twenty-six (26) services per calendar year. This is for any combination of evaluation, diagnosis and treatment services. A total of ~~twelve~~ ~~four~~ (124) hours per year is the maximum time allowed for ~~a combination of any evaluative or diagnostic assessment services and individualized treatment plan development provided to an eligible participant in a calendar year. Psychological and neuropsychological testing services are limited to two (2) computer-administered testing sessions and four (4) assessment hours per year. Additional testing must be prior authorized by the Department. Testing services are not included in the annual assessment limitation described at Subsection 124.01. The duration of psychological and neuropsychological testing is determined by the participant's benefits and the presenting reason for such an assessment.~~ (5-8-09)(7-1-11)T

~~11. Occupational Therapy Services.~~ Occupational therapy services are reimbursable when included as part of the participant's individualized treatment plan. Agency staff may deliver these services if they are an occupational therapist licensed in accordance with IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants." The practice of occupational therapy encompasses the evaluation, consultation, and treatment of individuals whose abilities to cope with the tasks of daily living are threatened or impaired. It includes a treatment program through the use of specific techniques that enhance functional performance and includes evaluation or assessment of the participant's: (5-8-09)

a. Self-care, functional skills, cognition, and perception; (5-8-09)

- b. Sensory and motor performance; (5-8-09)
- c. Play skills, vocational, and prevocational capacities; and (5-8-09)
- d. Need for adaptive equipment. (5-8-09)

**710. MENTAL HEALTH CLINIC SERVICES: WRITTEN INDIVIDUALIZED TREATMENT PLAN.**

A written individualized treatment plan is a medically-ordered plan of care. An individualized treatment plan must be developed and implemented for each participant receiving mental health clinic services. ~~Timeframes for treatment plans must not exceed twelve (12) months.~~ Treatment planning is reimbursable if conducted by a qualified professional identified in Subsection 715.03 of these rules. ~~(5-8-09)~~(7-1-11)T

**01. Individualized Treatment Plan Development.** The individualized treatment plan must be developed by the following: (3-30-07)

- a. The treatment staff providing the services; and (5-8-09)
- b. The participant, if capable, and his parent or legal guardian. The participant and his parent or legal guardian may also choose others to participate in the development of the plan. (5-8-09)

**02. Individualized Treatment Plan Requirements.** An individualized treatment plan must include, at a minimum, the following: (3-30-07)

a. Statement of the overall goals as identified by the participant or his parent or legal guardian and concrete, measurable treatment objectives to be achieved by the participant, including time frames for completion. The goals and objectives must be individualized, and must reflect the choices of the participant or his parent or legal guardian. The goals and objectives must address the emotional, behavioral, and skill training needs identified by the participant or his parent or legal guardian through the intake and assessment process. The tasks must be specific to the type of modality used and must specify the frequency and anticipated duration of therapeutic services. (5-8-09)

b. Documentation of who participated in the development of the individualized treatment plan. (3-30-07)

i. The authorizing physician must sign and date the plan within thirty (30) calendar days of the initiation of treatment. (3-30-07)

ii. The participant, when able, and his parent or legal guardian must sign the treatment plan indicating their agreement with service needs identified and their participation in its development. If these signatures indicating participation in the development of the treatment plan are not obtained, then the agency must document in the participant's record the reason the signatures were not obtained, including the reason for the participant's refusal to sign. A copy of the treatment plan must be given to the participant and his parent or legal guardian. (5-8-09)

iii. Other individuals who participated in the development of the treatment plan must sign the plan. (3-30-07)

iv. The author of the treatment plan must sign and date the plan and include his title and credentials. (5-8-09)

c. The treatment plan must be created in direct response to the findings of the ~~intake and~~ assessment process. ~~(5-8-09)~~(7-1-11)T

d. The treatment plan must include a prioritized list of issues for which treatment is being sought, and the type, frequency, and duration of treatment estimated to achieve all objectives based on the ability of the participant to effectively utilize services. (5-8-09)

e. Tasks that are specific, time-limited activities and interventions designed to accomplish the objectives in the individualized treatment plan that are recommended by the participant's interdisciplinary team and

agreed to by the participant or his parent or legal guardian. Each task description must specify the anticipated place of service, the frequency of services, the type of service, and the person(s) responsible to provide the service. (5-8-09)

- f. Discharge criteria and aftercare plans must also be identified on the treatment plan. (5-8-09)

**03. Treatment Plan Reviews.** The agency staff must conduct intermittent treatment plan reviews when medically necessary. The intermittent treatment plan reviews must be conducted with the participant or his legal guardian at least every one hundred twenty (120) days. During the reviews, the agency staff providing the services, the participant, and any other members of the participant's interdisciplinary team as identified by the participant or his legal guardian must review the progress the participant has made on objectives and identify objectives that may be added, amended, or deleted from the individualized treatment plan. The attendees of the treatment plan review are determined by the participant or his legal guardian and agency staff providing the services. (5-8-09)

**04. Physician Review of Treatment Plan.** Each individualized treatment plan must be reviewed, ~~and be completely rewritten~~ updated, and signed by a physician at least annually. Changes in the types, duration, or amount of services that are determined during treatment plan reviews must be reviewed and signed by a physician. Projected dates for the participant's reevaluation and the ~~rewrite~~ revision of the individualized treatment plan must be recorded on the treatment plan. (5-8-09)(7-1-11)T

**05. Continuation of Services.** Continuation of services after the first year must be based on documentation of the following: (3-30-07)

- a. Description of the ways the participant has specifically benefited from mental health services, and why he continues to need additional mental health services; and (5-8-09)
- b. The participant's progress toward the achievement of therapeutic goals that would eliminate the need for the service to continue. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**713. ~~(RESERVED)~~ MENTAL HEALTH CLINIC SERVICES: RESPONSIBILITIES OF THE DEPARTMENT.**

The Department will administer the provider agreement for the provision of mental health clinic services and is responsible for the following tasks: (7-1-11)T

**01. Prior Authorization Process.** Reimbursement for specific services that require prior authorization will be authorized from the date the required documentation is received by the Department. The Department will complete the prior authorization process within ten (10) working days from the date all the required information is received from the provider. The specific documentation that is required for prior authorization is dependent on the request for additional services. The Department must authorize the number of hours and type of services, as specifically required in these rules, which could be reasonably expected to address the participant's needs in relation to those services. (7-1-11)T

**02. Notice of Decision.** At the point the Department makes a decision that a participant is ineligible for specific services, a notice of decision citing the reason(s) the participant is ineligible for those services must be issued by the Department. The notice of decision must be sent to the adult participant and a copy to his legal guardian, if any. When the participant is a minor child, the notice of decision must be sent to the minor child's parent or legal guardian. (7-1-11)T

**03. Responding to Requests for Services.** When the Department receives from a provider a written request for services that must be prior authorized, the Department must review the request and either approve or deny the request within ten (10) working days of receipt. A clear rationale for the increase in hours or change in service type must be included with the request. (7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**716. MENTAL HEALTH CLINIC SERVICES: RECORD REQUIREMENTS FOR PROVIDERS.**

**01. Assessments.** ~~An intake assessment or~~ comprehensive diagnostic assessment must be contained in all participant medical records. ~~(5-8-09)~~(7-1-11)T

**02. Informed Consent.** The agency must ensure that participants who receive services through the agency have obtained informed consent from the participant or his legal guardian indicating agreement with all of the elements on the individualized treatment plan including choice of the provider agency, designated services, times, dates, frequencies, objectives, goals, and exit criteria. For a minor child, informed consent must be obtained from the minor's parent or legal guardian. (5-8-09)

**03. Documentation.** All ~~intake histories, psychiatric evaluations, psychological~~ assessments and testing, or specialty evaluations must be in written form, dated, and fully signed to certify when completed and by whom, and retained in the participant's file for documentation purposes. ~~(3-30-07)~~(7-1-11)T

**04. Data.** All data gathered must be directed towards formulation of a written diagnosis, problem list, and individualized treatment plan which specifies the type, frequency, and anticipated duration of treatment. (3-30-07)

**05. Mental Health Clinic Record-Keeping Requirements.** (3-30-07)

**a. Maintenance.** Each mental health clinic will be required to maintain records on all services provided to Medicaid participants. (5-8-09)

**b. Record Contents.** The records must contain the current individualized treatment plan ordered by a physician and must meet the requirements as set forth in Section 710 of this rule. (5-8-09)

**c. Requirements.** The records must: (3-30-07)

i. Specify the exact type of treatment provided; and (3-30-07)

ii. Who the treatment was provided by; and (3-30-07)

iii. Specify the duration of the treatment and the time of day delivered; and (3-30-07)

iv. Contain detailed records which outline exactly what occurred during the therapy session or participant contact documented by the person who delivered the service; and (3-30-07)

v. Contain the legible, dated signature, with degree credentials listed, of the staff member performing the service. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**741. AUDIOLOGY SERVICES: PARTICIPANT ELIGIBILITY.**

~~When specifically ordered by a physician, all participants are eligible for audiometric examination and testing once in each calendar year.~~ ~~(3-30-07)~~

**01. All Participants.** All participants are eligible to receive diagnostic screening services necessary to obtain a differential diagnosis. (7-1-11)T

**02. Participants Under the Age of 21.** Participants under the age of twenty-one (21) are eligible for all services listed in Section 742 of these rules. (7-1-11)T

**742. AUDIOLOGY SERVICES: COVERAGE AND LIMITATIONS.**

All audiology services must be ordered by a physician or midlevel practitioner. The Department will pay for routine audiometric examination and testing once in each calendar year, and audiometric services and supplies in accordance with the following guidelines and limitations: (3-30-07)(7-1-11)T

**01. Non-Implantable Hearing Aids.** When there is a documented hearing loss of at least thirty (30) decibels based on the standard Pure Tone Average (500, 1000, 2000 hertz), the Department will cover the purchase of ~~one (1)~~ non-implantable hearing aids ~~per~~ for participants ~~per lifetime~~ under the age of twenty-one (21) with the following requirements and limitations: (4-2-08)(7-1-11)T

**a.** Covered services included with the purchase of the hearing aid include proper fitting and refitting of the ear mold or aid, or both, during the first year, instructions related to the aid's use, and extended insurance coverage for two (2) years. (3-30-07)

**b.** The following services may be covered in addition to the purchase of the hearing aid for participants under the age of twenty-one (21): batteries purchased on a monthly basis, follow-up testing, necessary repairs resulting from normal use after the second year, and the refitting of the hearing aid or additional ear molds no more often than forty-eight (48) months from the last fitting. (3-30-07)(7-1-11)T

**c.** Lost, misplaced, stolen or destroyed hearing aids are the responsibility of the participant. The Department has no responsibility for the replacement of any hearing aid. In addition, the Department has no responsibility for the repair of hearing aids that have been damaged as a result of neglect, abuse or use of the aid in a manner for which it was not intended. (3-30-07)

**02. Implantable Hearing Aids.** The Department may cover a surgically implantable hearing aid for participants under the age of twenty-one (21) when: (4-2-08)(7-1-11)T

**a.** There is a documented hearing loss as described in Subsection 742.01 of this rule; (4-2-08)

**b.** Non-implantable options have been tried, but have not been successful; and (4-2-08)

**c.** The Department has determined that a surgically implanted hearing aid is medically necessary through the prior authorization process. The Department will consider the guidelines of private and public payers, evidence-based national standards or medical practice, and the medical necessity of each participant's case. (4-2-08)(7-1-11)T

**03. Provider Documentation Requirements.** The following information must be documented and kept on file by the provider: (4-2-08)

**a.** The participant's diagnosis; (4-2-08)

**b.** The results of the basic comprehensive audiometric exam which includes pure tone, air and bone conduction, speech reception threshold, most comfortable loudness, discrimination and impedance testing; and (4-2-08)

**c.** The brand name and model type of the hearing aid needed. (4-2-08)

**04. Allowance to Waive Impedance Test.** The Department will allow a medical doctor to waive the impedance test based on his documented judgment. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**781. VISION SERVICES: PARTICIPANT ELIGIBILITY.**

*Replacement of broken, lost, or missing glasses is the responsibility of the participant. (3-30-07)*

**01. Children Under the Age of 21.** Children under the age of twenty-one (21) are eligible for all services listed in Section 782 of these rules. (7-1-11)T

**02. Adults Age 21 and Over.** Adults age twenty-one (21) and over are eligible for: (7-1-11)T

**a.** Services necessary to treat or monitor a chronic condition, such as diabetes, that may damage the eye; and (7-1-11)T

**b.** Acute conditions that if left untreated may cause permanent or chronic damage to the eye. (7-1-11)T

**782. VISION SERVICES: COVERAGE AND LIMITATIONS.**

The Department will pay for vision services and supplies in accordance with the guidelines and limitations listed below. (3-30-07)

**01. Eye Examinations.** The Department will pay participating physicians and optometrists for one (1) eye examination during any twelve (12) month period for each eligible Medicaid participant to determine the need for glasses to correct a refractive error. Each eligible Medicaid participant, following a diagnosis of visual defects and a recommendation that eyeglasses are needed for correction of a refractive error, can receive eyeglasses within Department guidelines. (3-30-07)

**02. Lenses.** Lenses, single vision or bifocal, will be purchased by the Department not more often than once every four (4) years except when there is documentation of a major visual change as defined by the Department. (3-30-07)

~~**a.** Polycarbonate lenses will be purchased only when there is clear documented evidence that the thickness of the plastic lenses precludes their use (prescriptions above plus or minus two (2) diopters of correction). Documentation must be kept on file by both the examining and supplying providers. (3-30-07)~~

~~**ba.** Scratch resistant coating is required for all plastic and polycarbonate lenses. (3-30-07)~~

~~**eb.** Payment for tinted lenses will only be made when there is a diagnosis of albinism or in the case of other extreme medical conditions as defined by the Department as defined in the Medical Vendor Provider Handbook. Documentation must be kept on file by both the examining and supplying providers. (3-30-07)~~

~~**dc.** All contact lenses require prior authorization by the Department. Contact lenses will be covered only with documentation that an extreme condition requiring a of: (7-1-11)T~~

~~**i.** A need for correction equal to or greater than plus or minus four ten (-4±10) diopters; or (7-1-11)T~~

~~**ii.** An extreme medical condition that does not allow correction through the use of conventional lenses, such as cataract surgery, keratoconus, anisometropia, or other extreme conditions as defined by the Department that preclude the use of conventional lenses. Prior authorization is required by the Department. (3-30-07)(7-1-11)T~~

**03. Replacement Lenses.** Replacement lenses will be purchased prior to the four (4) year limitation only with documentation of a major visual change as defined by the Department in the Idaho Medicaid Provider Handbook. (3-30-07)

**04. Frames.** Frames will be purchased according to the following guidelines: (3-30-07)

**a.** One (1) set of frames will be purchased by the Department not more often than once every four (4)



years for eligible participants; (3-30-07)

**b.** Except when it is documented by the physician that there has been a major change in visual acuity that cannot be accommodated in lenses that will fit in the existing frames, new frames also may be authorized. (3-30-07)

**05.** Fitting Fees. Fitting fees for either contact lenses or conventional frames and lenses are covered only when the participant is eligible under the Medicaid program guidelines to receive the supplies associated with the fitting fee. (7-1-11)T

**056.** **Non-Covered Items.** A Medicaid Provider may receive payment from a Medicaid participant for vision services that are either not covered by the State Plan, or include special features or characteristics that are desired by the participant but are not medically necessary. Non covered items include Trifocal lenses, Progressive lenses, photo gray, and tint. Replacement of broken, lost, or missing glasses is the responsibility of the participant. (~~3-30-07~~)(7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**852. SCHOOL-BASED SERVICE: COVERAGE AND LIMITATIONS.**

The Department will pay school districts, charter schools, and the Idaho Infant Toddler Program, for covered rehabilitative and health-related services. Services include medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code. (3-30-07)

**01. Excluded Services.** The following services are excluded from Medicaid payments to school-based programs: (3-30-07)

**a.** Vocational Services. (3-30-07)

**b.** Educational Services. Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education. Evaluations completed for educational services only cannot be billed. (3-30-07)

**c.** Recreational Services. (3-30-07)

**02. Evaluation And Diagnostic Services.** Evaluations to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must: (3-30-07)

**a.** Recommended or Referred by a Physician or Other Practitioner of the Healing Arts. Be recommended or referred by a physician or other practitioner of the healing arts licensed and approved by the state of Idaho to make such recommendations or referrals; (3-30-07)

**b.** Conducted by Qualified Professionals. Be conducted by qualified professionals for the respective discipline as defined in Section 854 of these rules; (3-30-07)

**c.** Directed Toward Diagnosis. Be directed toward a diagnosis; and (3-30-07)

**d.** Recommend Interventions. Include recommended interventions to address each need. (3-30-07)

**03. Reimbursable Services.** School districts, charter schools, and the Idaho Infant Toddler program can bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts licensed and approved by the state of Idaho to make such recommendations or referrals for the Medicaid services for which the school district, charter school, or Idaho Infant Toddler Program is seeking reimbursement. (3-30-07)

~~a. Collateral Contact. Consultation or treatment direction about the student to a significant other in the student's life may be face-to-face or by telephone contact. Collateral contact for general staff training, regularly scheduled parent teacher conferences, or general parent education, or for the Individualized Education Program (IEP) development and review team meetings, even when the parent is present, is not reimbursed. The term collateral contact is defined in Subsection 010.16 of these rules. (3-29-10)~~

~~ba. Developmental Therapy and Evaluation. Developmental therapy may be billed, including evaluation and instruction in daily living skills the student has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy beyond age-appropriate learning situations. Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the student's disability. (3-30-07)~~

~~eb. Medical Equipment and Supplies. Medical equipment and supplies that are covered by Medicaid must be ordered by a physician and prior authorized, based on medical necessity, in order to be billed. Authorized items must be used at school or for the Idaho Infant Toddler Program at the location where the service is provided. Equipment that is too large or unsanitary to transport from home to school may be covered if prior authorized. The equipment and supplies must be used for the student's exclusive use and transfer with the student if the student changes schools. Equipment no longer usable by the student, may be donated to the school or Idaho Infant Toddler Program by the student. (3-30-07)~~

~~ec. Nursing Services. Skilled nursing services must be provided by a licensed nurse, within the scope of his practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed. (3-30-07)~~

~~ed. Occupational Therapy and Evaluation. Occupational therapy and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed. (3-30-07)~~

~~fe. Personal Care Services. School based personal care services include medically oriented tasks having to do with the student's physical or functional requirements such as basic personal care and grooming; assistance with bladder or bowel requirements; assistance with eating (including feeding), or other tasks delegated by a licensed professional nurse (RN). (3-30-07)~~

~~gf. Physical Therapy and Evaluation. (3-30-07)~~

~~hg. Psychological Evaluation. (3-30-07)~~

~~ih. Psychotherapy. (3-30-07)~~

~~ji. Psychosocial Rehabilitation (PSR) Services and Evaluation. Psychosocial rehabilitation (PSR) services and evaluation services to assist the student in gaining and utilizing skills necessary to participate in school. Training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, study skills, and coping skills are types of interventions that may be reimbursed. This service is to prevent placement of the student into a more restrictive educational situation. See IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 123 for a description of PSR services. (3-29-10)~~

~~kj. Intensive Behavioral Intervention (IBI). Intensive behavioral interventions are individualized, comprehensive, proven interventions used on a short term, one-to-one basis that produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. Professionals may provide consultation to parents and to other staff who provide therapy for the child in other disciplines to assure successful integration and transition from IBI to other therapies and environments. (3-30-07)~~

~~lk. Speech/Audiological Therapy and Evaluation. (3-30-07)~~

~~ml. Social History and Evaluation. (3-30-07)~~

**¶m.** Transportation Services. School districts, charter schools, and the Idaho Infant Toddler programs can receive reimbursement for mileage for transporting a student to and from home, school, or location of services when: (3-30-07)

i. The student requires special transportation assistance such as a wheelchair lift, an attendant, or both, when medically necessary for the health and safety of the student and ordered by a physician; (3-30-07)

ii. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; (3-30-07)

iii. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; (3-30-07)

iv. Both the Medicaid-covered service and the need for the special transportation are included on the student's plan; and (3-30-07)

v. The mileage, as well as the services performed by the attendant, are documented. See Section 854 of these rules for documentation requirements. (3-30-07)

**¶n.** Interpretive Services. Interpretive services needed by a student who does not adequately speak or understand English and requires an interpreter to communicate with the professional or paraprofessional providing the student with a health-related service may be billed with the following limitations: (3-30-07)

i. Payment for interpretive services is limited to the specific time that the student is receiving the health-related service; (3-30-07)

ii. Both the Medicaid-covered service and the need for interpretive services must be included on the student's plan; and (3-30-07)

iii. Interpretive services are not covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**854. SCHOOL-BASED SERVICE: PROVIDER QUALIFICATIONS AND DUTIES.**

In addition to the evaluations and maintenance of the plans, the following documentation must be maintained by the provider and retained for a period of six (6) years: (3-30-07)

**01. Service Detail Reports.** A service detail report which includes: (3-30-07)

a. Name of student; (3-30-07)

b. Name and title of the person providing the service; (3-30-07)

c. Date, time, and duration of service; (3-30-07)

d. Place of service, if provided in a location other than school; and (3-30-07)

e. Student's response to the service. (3-30-07)

**02. One Hundred Twenty Day Review.** A documented review of progress toward each service plan goal completed at least every one hundred twenty (120) days from the date of the annual plan. (3-30-07)

**03. Documentation of Qualifications of Providers.** (3-30-07)

**04. Copies of Required Referrals and Recommendations.** Copies of required referrals and recommendations. (3-30-07)

**05. Parental Notification.** School districts, charter schools, and the Idaho Infant Toddler programs must document that parents were notified of the health-related services and equipment for which they will bill Medicaid. Notification must comply with the requirements in Subsection 854.06 of this rule. (3-30-07)

**06. Requirements for Cooperation with and Notification of Parents and Agencies.** Each school district, charter school, or Idaho Infant Toddler Program billing for Medicaid services must act in cooperation with students' parents and with community and state agencies and professionals who provide like Medicaid services to the student. (3-30-07)

**a. Notification of Parents.** For all students who are receiving Medicaid reimbursed services, school districts, charter schools, and the Idaho Infant Toddler program must ensure that parents are notified of the Medicaid services and equipment for which they will bill Medicaid. Notification must describe the service(s), service provider(s), and state the type, location, frequency, and duration of the service(s). The school district must provide the student's parent or guardian with a current copy of the child's plan and any pertinent addenda; and

~~(3-30-07)~~(7-1-11)T

**b. Notification to Primary Care Physician.** School districts, charter schools, and the Idaho Infant Toddler program must request the name of the student's primary care physician from the parent or guardian so the school program can share health-related information with the physician with written consent from the parent or guardian. The following information must be sent to the student's primary care physician: (3-30-07)

i. Results of evaluations within sixty (60) days of completion; (3-30-07)

ii. A copy of the cover sheet and services page within thirty (30) days of the plan meeting; and (3-30-07)

iii. A copy of progress notes, if requested by the physician, within sixty (60) days of completion. (3-30-07)

**c. Other Community and State Agencies.** Upon receiving a request for a copy of the evaluations or the current plan, the school district, charter school, or Idaho Infant Toddler Program must furnish the requesting agency or professional with a copy of the plan or appropriate evaluation after obtaining consent for release of information from the student's parent or guardian. (3-30-07)

**d. Parental Consent to Release Information.** School districts, charter schools, and the Idaho Infant Toddler program: (3-30-07)

i. Must obtain consent from the parent to release information regarding education-related services, in accordance with Federal Education Rights and Privacy Act (FERPA) regulations; (3-30-07)

ii. Must document the parent's denial of consent if the parent refuses to consent to the release of information regarding education-related services, including release of the name of the student's primary care physician. (3-30-07)

**07. Provider Staff Qualifications.** Medicaid will only reimburse for services provided by qualified staff. See Subsection 854.08 of this rule for the limitations and requirements for paraprofessional service providers. The following are the minimum qualifications for professional providers of covered services: (3-30-07)

~~**a. Collateral Contact.** Contact and direction must be provided by the professional who provides the treatment to the student. (3-30-07)~~

**ba.** Developmental Therapy and Evaluation. Must be provided by or under the direction of a developmental specialist, as set forth in IDAPA 16.04.11, "Developmental Disabilities Agencies." Certified special

education teachers are not required to take the Department-approved course indicated in IDAPA 16.04.11 and be certified as a Developmental Specialist, Child. Only those school personnel who are working under a Letter of Authorization or as a Specialty Consultant must meet the certification requirements in IDAPA 16.04.11. (3-30-07)

**eb.** Medical Equipment and Supplies. See Subsection 852.03 of these rules. (3-30-07)

**ec.** Nursing Services. Must be provided by a licensed professional nurse (RN) or licensed practical nurse (LPN) licensed to practice in Idaho. (3-30-07)

**ed.** Occupational Therapy and Evaluation. Must be provided by or under the supervision of an individual qualified and registered to practice in Idaho. (3-30-07)

**fe.** Personal Care Services. Must be provided by or under the direction of, a licensed professional nurse (RN) or licensed practical nurse (LPN), licensed by the State of Idaho. When services are provided by a CNA, the CNA must be supervised by an RN. Medically-oriented services having to do with the student's physical or functional requirements, such as basic personal care and grooming, assistance with bladder or bowel requirements, and assistance with eating (including feeding), must be identified on the plan of care and may be delegated to an aide in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-30-07)

**gf.** Physical Therapy and Evaluation. Must be provided by an individual qualified and licensed as a physical therapist to practice in Idaho. (3-30-07)

**hg.** Psychological Evaluation. Must be provided by a: (3-30-07)

i. Licensed psychiatrist; (3-30-07)

ii. Licensed physician; (3-30-07)

iii. Licensed psychologist; (3-30-07)

iv. Psychologist extender registered with the Bureau of Occupational Licenses; or (3-30-07)

v. Certified school psychologist. (3-30-07)

**ih.** Psychotherapy. Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials: (3-30-07)

i. Psychiatrist, M.D.; (3-30-07)

ii. Physician, M.D.; (3-30-07)

iii. Licensed psychologist; (3-30-07)

iv. Licensed clinical social worker; (3-30-07)

v. Licensed clinical professional counselor; (3-30-07)

vi. Licensed marriage and family therapist; (3-30-07)

vii. Certified psychiatric nurse (R.N.), as described in Subsection 707.13 of these rules; (3-29-10)

viii. Licensed professional counselor whose provision of psychotherapy is supervised in compliance with IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; (3-29-10)

ix. Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; (3-29-10)

x. Licensed associate marriage and family therapist whose provision of psychotherapy is supervised as described in IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; or (3-29-10)

xi. Psychologist extender, registered with the Bureau of Occupational Licenses, whose provision of diagnostic services is supervised in compliance with IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (3-29-10)

**ji.** Psychosocial Rehabilitation. Must be provided by a: (3-30-07)

i. Licensed physician, licensed practitioner of the healing arts, or licensed psychiatrist; (3-29-10)

ii. Licensed master's level psychiatric nurse; (3-30-07)

iii. Licensed psychologist; (3-30-07)

iv. Licensed clinical professional counselor or professional counselor; (3-30-07)

v. Licensed marriage and family therapist or associate marriage and family therapist; (3-29-10)

vi. Licensed masters social worker, licensed clinical social worker, or licensed social worker; (3-30-07)

vii. Psychologist extender registered with the Bureau of Occupational Licenses; (3-30-07)

viii. Licensed professional nurse (RN); (3-30-07)

ix. Psychosocial rehabilitation specialist as defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 131; (3-29-10)

x. Licensed occupational therapist; (3-30-07)

xi. Certified school psychologist; or (3-30-07)

xii. Certified school social worker. (3-30-07)

**kj.** Intensive Behavioral Intervention. Must be provided by or under the direction of a qualified professional who meets the requirements set forth in IDAPA 16.04.11 "Developmental Disabilities Agencies." (3-30-07)

**kl.** Speech/Audiological Therapy and Evaluation. Must be provided by or under the direction of a speech pathologist or audiologist who possesses a certificate of clinical competence from the American Speech, Language and Hearing Association (ASHA); or who will be eligible for certification within one (1) year of employment. Personnel records must reflect the expected date of certification. (3-30-07)

**ml.** Social History and Evaluation. Must be provided by a licensed professional nurse (RN), psychologist, M.D, school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. (3-30-07)

**mm.** Transportation. Must be provided by an individual who has a current Idaho driver's license and is covered under vehicle liability insurance that covers passengers for business use. (3-30-07)

**08. Paraprofessionals.** The schools and Infant Toddler Program may use paraprofessionals to provide developmental therapy; occupational therapy; physical therapy; and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be delegated and supervised by a professional therapist as defined by the appropriate licensure and certification rules. The portions of the treatment

plan which can be delegated to the paraprofessional must be identified in the IEP or IFSP. (3-29-10)

**a.** Occupational Therapy. Refer to IDAPA 24.06.01, “Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants,” for supervision and service requirements. (3-29-10)

**b.** Physical Therapy. Refer to IDAPA 24.13.01, “Rules Governing the Physical Therapy Licensure Board,” for supervision and service requirements (3-29-10)

**c.** Speech-Language Pathology. Refer to IDAPA 24.23.01, “Rule of the Speech and Hearing Services Licensure Board,” and the American Speech-Language-Hearing Association (ASHA) guidelines for supervision and service requirements for speech-language pathology. The guidelines have been incorporated by reference in Section 004 of these rules. (3-29-10)

**d.** Developmental Therapy. Refer to IDAPA 16.04.11, “Developmental Disabilities Agencies,” for supervision and service requirements. (3-29-10)

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1007**

#### **NOTICE OF RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING**

**EFFECTIVE DATE FOR RESCISSION OF TEMPORARY RULE:** The effective date of the rescission of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Section 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted and is vacating the proposed rulemaking initiated under this docket. The action is authorized pursuant to Sections 56-202(b), 56-203(7), 56-203(9), 56-250 through 56-257, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule and vacating the previously initiated rulemaking.

The temporary rule published under this Docket No. 16-0310-1007, is being rescinded as of July 1, 2011. The proposed rule is being vacated. The original temporary and proposed rule Docket 16-0310-1007 published in the [December 1, 2010, Idaho Administrative Bulletin, Vol. 10-12, pages 128 through 150](#). The Department plans to continue the dental selective contract system for Enhanced Plan participants provided in IDAPA16.03.10, "Medicaid Enhanced Plan Benefits," published under Docket 16-0310-1103 in this Bulletin

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

There is no fiscal impact to state general funds for the rescission of the temporary rule and vacation of the proposed rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule and vacation of the proposed rulemaking, contact Arla Farmer at (208) 364-1958.

DATED this 8th day of July, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
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**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1101**

**NOTICE OF RESCISSION OF TEMPORARY RULE**

**EFFECTIVE DATE FOR RESCISSION OF TEMPORARY RULE:** The effective date of the rescission of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted. The action is authorized pursuant to Sections 56-202(b), 56-203(7), 56-203(9), and 56-250 through 56-257, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule and vacating the previously initiated rulemaking:

The temporary rules published under Docket No.16-0310-1101 in the [January 5, 2011, Idaho Administrative Bulletin, Vol. 11-1, pages 124 through 129](#), are being rescinded as of July 1, 2011. A revised version of these rule changes is being carried forward under Docket No.16-0310-1104 that is publishing in this same Bulletin.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact to the state general fund due to the rescission of this temporary rule.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule and vacation of the proposed rulemaking, contact Robert Kellerman at (208) 364-1994.

DATED this 8th day of July, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
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**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1103**

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

**EFFECTIVE DATE:** The effective date of these temporary rules is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 56-203(7), 56-203(9), 56-250 through 56-257, 56-260 through 56-266, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

House Bill 260 passed by the 2011 Legislature, directed the Department to limit benefits for Medicaid eligible participants' dental services. Section 56-255(5)(c), Idaho Code, provides children access to prevention, diagnosis and treatment services defined in federal law. Adult coverage is limited to medically necessary services with the exception that pregnant women have access to dental services that reflect evidence-based practice. This rulemaking reflects changes needed to meet statutory requirements.

**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:

These rule changes implement statutory changes adopted by the 2011 Legislature effective July 1, 2011.

**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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

These rule changes are estimated to result in cost savings of \$4,438,200 (\$1,336,600 state funds, and \$3,101,600 federal funds) for state fiscal year 2012.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is in response to 2011 legislation.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

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

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 August 24, 2011.

DATED this 8th day of July, 2011.

Tamara Prisock  
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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0310-1103**

**075. ENHANCED PLAN BENEFITS: COVERED SERVICES.**

Individuals who are eligible for the Medicaid Enhanced Plan Benefits are eligible for all benefits covered under IDAPA 16.03.09, "Medicaid Basic Plan Benefits," with the exception of coverage for dental services. In addition to those benefits, individuals in the enhanced plan are eligible for the following enhanced benefits as provided for in this chapter of rules. (5-8-09)

**01. Dental Services.** Dental Services are provided as described under Sections 080 through 085<sup>9</sup> of these rules. (~~5-8-09~~)(7-1-11)T

**02. Enhanced Hospital Benefits.** Organ transplants are provided under the Enhanced Hospital services as described in Sections 090 through 099 of these rules. (3-19-07)

**03. Enhanced Mental Health Benefits.** Enhanced Mental Health services are provided under Sections 100 through 147 of these rules. (3-19-07)

**04. Enhanced Home Health Benefits.** Private Duty Nursing services are provided under the Enhanced Home Health as described in Sections 200-219 of these rules. (3-19-07)

**05. Therapies.** Physical, Speech, and Occupational Therapy Providers as described in Section 215 of these rules. (3-19-07)

**06. Long Term Care Services.** The following services are provided under the Long Term Care Services. (3-30-07)

**a.** Nursing Facility Services as described in Sections 220 through 299 of these rules. (3-19-07)

**b.** Personal Care Services as described in Sections 300 through 308 of these rules. (3-30-07)

**c.** A & D Wavier Services as described in Sections 320 through 330 of these rules. (3-30-07)

**07. Hospice.** Hospice services as described in Sections 450 through 459 of these rules. (3-19-07)

**08. Developmental Disabilities Services.** (3-19-07)

**a.** Developmental Disability Standards as described in Sections 500 through 506 of these rules. (3-19-07)

**b.** Behavioral Health Prior Authorization as described in Sections 507 through 520 of these rules. (3-19-07)

**c.** ICF/ID as described in Sections 580 through 649 of these rules. (3-19-07)

- d. Developmental Disabilities Agencies as described in Sections 700 through 719 of these rules. (3-19-07)
09. **Service Coordination Services.** Service coordination as described in 720 through 779 of these rules. (3-19-07)
10. **Breast and Cervical Cancer Program.** Breast and Cervical Cancer Program is described in Sections 780 through 800 of these rules. (3-19-07)
076. -- 079. (RESERVED)

**080. DENTAL SERVICES: SELECTIVE CONTRACT FOR DENTAL COVERAGE.**

All participants who are eligible for Medicaid's Enhanced Plan dental benefits are covered under a selective contract for a dental insurance program called Idaho Smiles at <http://www.healthandwelfare.idaho.gov/Medical/Medicaid/MedicalCare/DentalServices/tabid/696/Default.aspx>. (7-1-11)T

**080.1. DENTAL SERVICES: DEFINITIONS.**

Dental services are provided for the relief of dental pain, prosthetic replacement, and the correcting of handicapping malocclusion. These services must be purchased from a licensed dentist or denturist. For the purposes of dental services covered in Sections 080 through 087 of these rules, the following definitions apply: (5-8-09)(7-1-11)T

- 01. Adult.** A person who is past the month of his twenty-first birthday. (7-1-11)T
- 02. Child.** A person from birth through the month of his twenty-first birthday. (7-1-11)T
- 03. Idaho Smiles.** A dental insurance program provided to eligible Medicaid participants through a selective contract between the Department and a dental insurance carrier. (7-1-11)T
- 04. Medicare/Medicaid Coordinated Plan (MMCP).** Medical assistance in which Medicaid purchases services from a Medicare Advantage Organization (MAO) and provides other Medicaid-only services covered under the Medicaid Enhanced Plan in accordance with IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits." (7-1-11)T

**080.2. DENTAL SERVICES: PARTICIPANT ELIGIBILITY.**

Children, adults, and pregnant women on Medicaid's Pregnant Woman (PW) Program who meet the eligibility criteria for Medicaid's Enhanced Plan are eligible for Idaho Smiles dental benefits described in Section 083 of these rules. Participants who are over age twenty-one (21), who are eligible for both Medicare A and Medicare B, and who have chosen to enroll in a Medicare/Medicaid Coordinated Plan (MMCP) under IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits," Section 100, receive dental benefits from the MMCP insurance carrier and not from Idaho Smiles. (7-1-11)T

- ~~01. **Children's Coverage.** Dental services for children, covered through the month of their twenty first birthday, are listed in Sections 080 through 085 of these rules.~~ (5-8-09)
- ~~02. **Adult Coverage.** Covered dental services for Medicaid eligible persons who are past the month of their twenty first birthday who are not eligible under IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Pregnant Women (PW), Qualified Medicare Beneficiary (QMB), or under IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits," are listed in Subsections 082.14 and 082.15 of these rules.~~ (5-8-09)
- ~~03. **Limitations on Orthodontics.** Orthodontics are limited to participants from birth to twenty one (21) years of age who meet the eligibility requirements, and the Idaho Medicaid Handicapping Malocclusion Index as evaluated by the state Medicaid dental consultant. The Malocclusion Index may be found in the Appendix A of these rules. Participants already in orthodontic treatment who transfer to Idaho Medicaid must have their continuing treatment justified and authorized by the state Medicaid dental consultant.~~ (5-8-09)
- ~~04. **Participants Eligible for Other Programs.** Participants who have only Qualified Medicare Beneficiary (QMB) eligibility are not eligible for dental services.~~ (5-8-09)

**0823. DENTAL SERVICES: COVERAGE AND LIMITATIONS.**

Some covered dental services may require authorization from the Idaho Smiles contractor. (7-1-11)T

**01. Covered Dental Services Coverage for Children.** Children are covered for ~~D~~dental services are covered by Medicaid as described in Section 081 of these rules. Idaho uses the procedure codes contained in the Current Dental Terminology (CDT) handbook published by the American Dental Association. that include:  
 (5-8-09)(7-1-11)T

**a. Preventative and problem-focused exams, diagnostic, restorative, endodontic, periodontic, prosthodontic, and orthodontic treatments, dentures, crowns and oral surgery;** (7-1-11)T

**b. Other dental services that are determined medically necessary by the Department, as required by the Early and Periodic Screening and Diagnostic Testing (EPSDT) guidelines specified in Section 1905(r) of the Social Security Act, are also covered.** (7-1-11)T

**02. Non-Covered Services.** ~~Non covered services are procedures not recognized by the American Dental Association (ADA) or services not listed in these rules.~~ **Children's Orthodontics Limitations.** Orthodontics are limited to children who meet the Enhanced Plan eligibility requirements, and the Idaho Medicaid Handicapping Malocclusion Index as evaluated by the state Medicaid dental consultant and the dental insurance contractor's dental consultant. The Malocclusion Index is found in Appendix A of these rules. (5-8-09)(7-1-11)T

**03. Diagnostic Dental Procedures.**

<b>TABLE 082.03—DENTAL DIAGNOSTIC PROCEDURES</b>	
<b>Dental Code</b>	<b>Description</b>
<b>a. <u>General Oral Evaluations.</u></b> <i>The following evaluations are not allowed in combination of the same day:</i>	
<i>D0120</i>	<i>Periodic oral evaluation. Includes periodontal screening. One (1) periodic examination is allowed every six (6) months.</i>
<i>D0140</i>	<i>Limited oral evaluation. An evaluation or re-evaluation limited to a specific oral health problem. Not to be used when a participant 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.</i>
<i>D0150</i>	<i>Comprehensive oral evaluation. One (1) comprehensive examination is allowed every twelve (12) months. Six (6) months must elapse before a periodic exam can be paid.</i>
<i>D0160</i>	<i>Detailed and extensive oral evaluation. A detailed and extensive problem focused evaluation that entails extensive diagnostic and cognitive modalities based on the findings of a comprehensive oral evaluation. One (1) detailed and extensive oral evaluation is allowed every twelve (12) months.</i>
<i>D0170</i>	<i>Re-evaluation, limited, problem focused. Established participant, not post-operative visit.</i>
<b>b. <u>Radiographs/Diagnostic Images.</u></b>	
<i>D0210</i>	<i>Intraoral—complete series (including bitewings). Complete series x rays are allowed only once in a three (3) year period. A complete intraoral series consists of fourteen (14) periapicals and one (1) series of four (4) bitewings.</i>
<i>D0220</i>	<i>Intraoral periapical—first film.</i>
<i>D0230</i>	<i>Intraoral periapical—each additional film.</i>

<b>TABLE 082.03—DENTAL DIAGNOSTIC PROCEDURES</b>	
<b>Dental Code</b>	<b>Description</b>
D0240	Intraoral occlusal film.
D0270	Bitewing—single film. Total of four (4) bitewings allowed every six (6) months.
D0272	Bitewings—two (2) films. Total of four (4) bitewings allowed every six (6) months.
D0274	Bitewings—four (4) films. Total of four (4) bitewings allowed every six (6) months.
D0277	Vertical bitewings. Seven (7) to eight (8) films. Allowed every six (6) months.
D0330	Panoramic film. Panorex, panolipse or orthopantograph are also allowed under this code. Panoramic-type films are allowed once in a thirty-six (36) month period. This time limitation does not apply to preoperative or postoperative surgery cases. Doing both a panoramic film and an intraoral complete series is not allowed. Up to four (4) bitewings or periapicals are allowed in addition to a panoramic film.
D0340	Cephalometric film. Allowed once in a twelve (12) month period.
<b>c. Test And Laboratory Examination.</b>	
D0460	Pulp vitality tests. Includes multiple teeth and contralateral comparison(s) as indicated. Allowed once per visit per day.
D0470	Diagnostic casts.
<b>d. Diagnostic.</b>	
D0999	Unspecified diagnostic procedure, by report. Narrative required when prior authorizing.

(5-8-09)

**04. Dental Preventive Procedures.** Medicaid provides no additional allowance for a cavitrion or ultrasonic prophylaxis.

<b>TABLE 082.04—DENTAL PREVENTIVE PROCEDURES</b>	
<b>Dental Code</b>	<b>Description</b>
<b>a. Dental Prophylaxis.</b>	
D1110	Prophylaxis—Adult (twelve (12) years of age and older). A prophylaxis is allowed once every six (6) months. Includes polishing procedures to remove coronal plaque, calculus, and stains.
D1120	Prophylaxis—Children/young adult (under age twelve (12)). A prophylaxis is allowed once every six (6) months.
<b>b. Fluoride Treatments.</b>	
D1203	Topical application of fluoride—one (1) treatment. Prophylaxis not included. Allowed once every six (6) months for participants under age twenty (21).
D1204	Topical application of fluoride—adult, twenty-one (21) years of age and over. Prophylaxis not included. Allowed once every six (6) months.
<b>c. Other Preventive Services.</b>	

**TABLE 082.04—DENTAL PREVENTIVE PROCEDURES**

Dental Code	Description
D1351	Sealant—per tooth. Mechanically and/or chemically prepared enamel surface. Allowed for participants under twenty-one (21) years of age. Limited to once per tooth every three (3) years. Tooth designation required.
<b>d. Space Management Therapy.</b> Space maintainers are allowed to hold space for missing teeth for participants under age twenty-one (21). No reimbursement is allowed for removing maintainers, unless by dentist other than providing dentist. Vertical space maintainers are not covered.	
D1510	Space maintainer—fixed—unilateral. Limited up to age twenty-one (21). Only allowed once per tooth-space. Tooth space designation required.
D1515	Space maintainer—fixed—bilateral. Limited up to age twenty-one (21). Only allowed once per arch. Arch designation required.
D1520	Space maintainer, removable—unilateral. Allowed once every two (2) years up to twenty-one (21) years of age. Arch designation required.
D1525	Space maintainer, removable—bilateral. Allowed once every two (2) years up to twenty-one (21) years of age. Arch designation required.
D1550	Re-cementation of space maintainer. Limited up to age twenty-one (21). Only allowed once per quadrant or arch. Quadrant or arch designation required.

(5-8-09)

~~05. Restorations.~~

(5-8-09)

~~a. Posterior Restoration.~~

(5-8-09)

~~i. A one (1) surface posterior restoration is one in which the restoration involves only one (1) of the five (5) surface classifications: mesial, distal, occlusal, lingual, or facial (including buccal or labial).~~

(5-8-09)

~~ii. A two (2) surface posterior restoration is one in which the restoration extends to two (2) of the five (5) surface classifications.~~

(5-8-09)

~~iii. A three (3) surface posterior restoration is one in which the restoration extends to three (3) of the five (5) surface classification surface classifications.~~

(5-8-09)

~~iv. A four (4) or more surface posterior restoration is one in which the restoration extends to four (4) or more of the five (5) surface classifications.~~

(5-8-09)

~~b. Anterior Proximal Restoration.~~

(5-8-09)

~~i. A one (1) surface anterior proximal restoration is one in which neither the lingual nor facial margin of the restoration extends beyond the line angle.~~

(5-8-09)

~~ii. A two (2) surface anterior proximal restoration is one in which either the lingual or facial margin of the restoration extends beyond the line angle.~~

(5-8-09)

~~iii. A three (3) surface anterior proximal restoration is one in which both the lingual and facial margins of the restorations extend beyond the line angle.~~

(5-8-09)

~~iv. A four (4) or more surface anterior restoration is one in which both the lingual and facial margins~~

- ~~extend beyond the line angle and the incisal angle is involved. (5-8-09)~~
- ~~e. Amalgams and Resin Restoration. (5-8-09)~~
  - ~~i. Reimbursement for pit restoration is allowed as a one (1) surface restoration. (5-8-09)~~
  - ~~ii. Adhesives (bonding agents), bases, and the adjustment and/or polishing of sealant and restorations are included in the allowance for the major restoration. (5-8-09)~~
  - ~~iii. Liners and bases are included as part of the restoration. If pins are used, they should be reported separately. (5-8-09)~~
  - ~~d. Crowns. (5-8-09)~~
    - ~~i. When submitting for prior authorization, either an x-ray showing the root canal or an x-ray with a justification detailing the reason for the crown is required. (5-8-09)~~
    - ~~ii. Requests for re-doing crowns must be submitted for prior approval and include x-ray and justification. (5-8-09)~~

**TABLE 082.05 – RESTORATIONS**

<b>Dental Code</b>	<b>Description</b>
<b>e. Amalgam Restorations.</b>	
<del>D2140</del>	<del>Amalgam – one (1) surface, primary or permanent. Tooth designation required.</del>
<del>D2150</del>	<del>Amalgam – two (2) surfaces, primary or permanent. Tooth designation required.</del>
<del>D2160</del>	<del>Amalgam – three (3) surfaces, primary or permanent. Tooth designation required.</del>
<del>D2161</del>	<del>Amalgam – four (4) or more surfaces, primary or permanent. Tooth designation required.</del>
<b>f. Resin Restorations.</b>	
<del>Resin refers to a broad category of materials including but not limited to composites. May include bonded composite, light-cured composite, etc. Light-curing, acid-etching, and adhesives (including resin bonding agents) are part of the restoration. Report glass ionomers when used as restorations. If pins are used, report them separately.</del>	
<del>D2330</del>	<del>Resin – one (1) surface, anterior. Tooth designation required.</del>
<del>D2331</del>	<del>Resin – two (2) surfaces, anterior. Tooth designation required.</del>
<del>D2332</del>	<del>Resin – three (3) surfaces, anterior. Tooth designation required.</del>
<del>D2335</del>	<del>Resin – four (4) or more surfaces or involving incisal angle, anterior. Tooth designation required.</del>
<del>D2390</del>	<del>Resin-based composite crown, anterior, primary or permanent. Tooth designation required.</del>
<del>D2391</del>	<del>Resin-based composite – one (1) surface, posterior, primary or permanent.</del>
<del>D2392</del>	<del>Resin-based composite – two (2) surfaces, posterior, primary or permanent.</del>
<del>D2393</del>	<del>Resin-based composite – three (3) surfaces, posterior, primary or permanent.</del>
<del>D2394</del>	<del>Resin-based composite – four (4) surfaces, posterior, primary or permanent.</del>
<b>g. Crowns.</b>	
<del>D2710</del>	<del>Crown resin indirect. Tooth designation required. Prior authorization required.</del>



<b>TABLE 082.05 – RESTORATIONS</b>	
<b>Dental Code</b>	<b>Description</b>
D2721	Crown resin with predominantly base metal. Tooth designation required. Prior authorization required.
D2750	Crown, porcelain fused to high noble metal. Tooth designation required. Prior authorization required.
D2751	Crown porcelain fused too predominantly base metal. Tooth designation required. Prior authorization required.
D2752	Crown, porcelain fused to noble metal. Tooth designation required. Prior authorization required.
D2790	Crown, full cast, high noble metal. Tooth designation required. Prior authorization required.
D2791	Crown full cast predominantly base metal. Tooth designation required. Prior authorization required.
D2792	Crown, full cast noble metal. Tooth designation required. Prior authorization required.
<b>h. Other Restorative Services.</b>	
D2920	Re-cement crown. Tooth designation required.
D2930	Prefabricated stainless steel crown—primary tooth. Tooth designation required.
D2931	Prefabricated stainless steel crown—permanent tooth. Tooth designation required.
D2932	Prefabricated resin crown. Tooth designation required.
D2940	Sedative filling. Tooth designation required. Surface is not required.
D2950	Core buildup, including any pins. Tooth designation required. Limited to two (2) pins per tooth.
D2951	Pin retention—per tooth, in addition to restoration. Tooth designation required. Limited to two (2) pins per tooth.
D2954	Prefabricated post and core in addition to crown. Tooth designation required.
D2955	Post removal. Tooth designation required.
D2980	Crown repair. Tooth designation required.
D2999	Unspecified restorative procedure, by report. Narrative and tooth designation required when prior authorizing. Requires prior authorization.

(5-8-09)

**06- Endodontics.** Pulpotomies and root canal procedures cannot be paid with the same date of service for the same tooth.

<b>TABLE 082.06 – ENDODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
<b>a. Pulp Capping.</b>	
D3110	Pulp cap - direct (excluding final restoration). Tooth designation required.
<b>b. Pulpotomy.</b>	
D3220	Therapeutic pulpotomy (excluding final restoration). Once per tooth. Tooth designation required. Not to be construed as the first stage of root canal therapy.

<b>TABLE 082.06—ENDODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
D3221	<i>Pulpal debridement, primary &amp; permanent teeth. For relief of acute pain not to be construed as the first stage of root canal therapy. Not allowed same day as endodontic therapy. Tooth designation required.</i>
<b>e. Root Canal Therapy:</b> <i>Pulpectomy is part of root canal therapy. Includes all appointments necessary to complete treatment; also includes intra-operative radiographs. Does not include diagnostic evaluation and necessary radiographs/diagnostic images. Root canal therapy (includes treatment plan, x-rays, clinical procedures and follow-up care) is for permanent teeth only. Separate charges are allowable for open and drain if the procedure is done on different days.</i>	
D3310	<i>Anterior (excluding final restoration). Tooth designation required.</i>
D3320	<i>Bicuspid (excluding final restoration). Tooth designation required.</i>
D3330	<i>Molar (excluding final restoration). Tooth designation required.</i>
D3346	<i>Retreatment of previous root canal therapy, anterior. Tooth designation required.</i>
D3347	<i>Retreatment of previous root canal therapy, bicuspid. Tooth designation required.</i>
D3348	<i>Retreatment of previous root canal therapy, molar. Tooth designation required.</i>
<b>d. Apicoectomy/Periradicular Services:</b>	
D3410	<i>Apicoectomy/Periradicular surgery-anterior surgery or root of anterior tooth. Does not include placement of retrograde filling material. Tooth designation required.</i>
D3421	<i>Apicoectomy/Periradicular surgery-bicuspid (first root). Surgery on one root of a bicuspid does not include placement of retrograde filling material. Tooth designation required.</i>
D3425	<i>Apicoectomy/Periradicular surgery-Molar (first root). Does not include placement of retrograde filling material. Tooth designation required.</i>
D3426	<i>Apicoectomy/Periradicular surgery (each additional root). For molar surgeries when more than one root is being treated during the same procedure. Does not include retrograde filling material placement. Tooth designation required.</i>
D3430	<i>Retrograde filling—per root. For placement of retrograde filling material during Periradicular surgery procedures. Tooth designation required.</i>
D3999	<i>Unspecified restorative procedure, by report. Narrative and tooth designation required. Requires prior authorization.</i>

(5-8-09)

**07. Periodontics:**

<b>TABLE 082.07—PERIODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
<b>a. Surgical Services:</b>	
D4210	<i>Gingivectomy or gingivoplasty - four (4) or more contiguous teeth in quadrant. Quadrant designation required.</i>

<b>TABLE 082.07—PERIODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
D4211	Gingivectomy or gingivoplasty - one (1) to three (3) teeth in quadrant. Quadrant designation required.
<b>b. Non-Surgical Periodontal Services:</b>	
D4320	Provisional splinting—intracoronal.
D4321	Provisional splinting—extracoronal.
D4341	Periodontal scaling and root planing four (4) or more contiguous teeth per quadrant. Allowed once in a twelve (12) month period. This procedure is indicated for participants with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.
D4342	Periodontal scaling and root planing one (1) to three (3) teeth per quadrant. Allowed once in a twelve (12) month period. This procedure is indicated for participants with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.
D4355	Full mouth debridement to enable comprehensive periodontal evaluation and diagnosis. Allowed once in a twelve (12) month period. The removal of subgingival and/or supragingival plaque and calculus. This is a preliminary procedure and does not preclude the need for other procedures.
<b>c. Other Periodontal Services:</b>	
D4910	Periodontal maintenance procedures. Allowed once in a three (3) month period. This procedure is for participants who have completed periodontal treatment (surgical and/or non-surgical periodontal therapies exclusive of D4355) and includes removal of the bacterial flora from crevicular and pocket areas, scaling and polishing of the teeth, periodontal evaluation, and a review of the participant's plaque control efficiency.
D4999	Unspecified periodontal procedure. Narrative required when prior authorizing. Requires prior authorization.

(5-8-09)

~~08. Prosthodontics.~~

(5-8-09)

~~a. Removable Prosthodontics.~~

(5-8-09)

~~i. The Medicaid dental program covers only one (1) set of full dentures in a five (5) year period. Full dentures placed immediately must be of structure and quality to be considered the final set. Transitional or interim treatment dentures are not covered. No additional reimbursements are allowed for denture insertions.~~ (5-8-09)

~~ii. If full dentures are inserted during a month when the participant is not eligible, but other work, including laboratory work, is completed during an eligible period, the claim for the dentures is allowed.~~ (5-8-09)

~~iii. Medicaid pays for partial dentures once every five (5) years. Partial dentures are limited to participants age twelve (12) and older. One (1) partial per arch is covered. When a partial is inserted during a month when the participant is not eligible but all other work, including laboratory work, is completed during an eligible period, the claim for the partial is allowed.~~ (5-8-09)

~~b. Removable Prosthodontics by Codes.~~

<b>TABLE 082.08.b.— PROSTHODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
<i>i. Complete Dentures. This includes six (6) months of adjustments following placement.</i>	
D5110	<i>Complete denture—maxillary.</i>
D5120	<i>Complete denture—mandibular.</i>
D5130	<i>Immediate denture—maxillary.</i>
D5140	<i>Immediate denture—mandibular.</i>
<i>ii. Partial Dentures. This includes six (6) months of care following placement. Limited to twelve (12) years and older.</i>	
D5211	<i>Maxillary partial denture—resin base. Includes any conventional clasps, rests, and teeth.</i>
D5212	<i>Mandibular partial denture—resin base. Includes any conventional clasps, rests, and teeth.</i>
D5213	<i>Maxillary partial denture—cast metal framework with resin denture bases. Includes any conventional clasps, rests, and teeth.</i>
D5214	<i>Mandibular partial denture—cast metal framework with resin denture bases. Includes any conventional clasps, rests, and teeth.</i>
<i>iii. Adjustments To Complete And Partial Dentures. No allowance for adjustments for six (6) months following placement. Adjustments done during this period are included in complete/partial allowance.</i>	
D5410	<i>Adjust complete denture—maxillary.</i>
D5411	<i>Adjust complete denture—mandibular.</i>
D5421	<i>Adjust partial denture—maxillary.</i>
D5422	<i>Adjust partial denture—mandibular.</i>
<i>iv. Repairs To Complete Dentures.</i>	
D5510	<i>Repair broken complete denture base. Arch designation required.</i>
D5520	<i>Replace missing or broken teeth—complete denture (each tooth)—six (6) tooth maximum. Tooth designation required.</i>
<i>v. Repairs To Partial Dentures.</i>	
D5610	<i>Repair resin denture base. Arch designation required.</i>
D5620	<i>Repair cast framework. Arch designation required.</i>
D5630	<i>Repair or replace broken clasp. Arch designation required.</i>
D5640	<i>Replace broken teeth, per tooth. Tooth designation required.</i>
D5650	<i>Add tooth to existing partial denture. Does not involve clasp or abutment tooth. Tooth designation required.</i>
D5660	<i>Add clasp to existing partial denture. Involves clasp or abutment tooth.</i>
D5670	<i>Replace all teeth and acrylic on cast metal framework (maxillary).</i>
D5671	<i>Replace all teeth and acrylic on cast metal framework (mandibular).</i>
<i>vi. Denture Relining. Relines will not be allowed for six (6) months following placement of denture and then only once every two (2) years.</i>	

<b>TABLE 082.08.b.— PROSTHODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
D5730	<i>Reline complete maxillary denture (chairside).</i>
D5731	<i>Reline complete mandibular denture (chairside).</i>
D5740	<i>Reline maxillary partial denture (chairside).</i>
D5741	<i>Reline mandibular partial denture (chairside).</i>
D5750	<i>Reline complete maxillary denture (laboratory).</i>
D5751	<i>Reline complete mandibular denture (laboratory).</i>
D5760	<i>Reline maxillary partial denture (laboratory).</i>
D5761	<i>Reline mandibular partial denture (laboratory).</i>
<i>vii. Other Removable Prosthetic Services:</i>	
D5850	<i>Tissue conditioning, maxillary - per denture unit.</i>
D5851	<i>Tissue conditioning, mandibular per denture unit.</i>
D5899	<i>Unspecified removable prosthetic procedure, by report. Narrative required when prior authorizing. Requires prior authorization.</i>
D5899	<i>Unable to deliver full or partial denture. Prior authorization required. If the participant does not complete the process for the denture; leaves the state; cannot be located; or dies; the laboratory and professional fees may be billed to Medicaid with an invoice listing lab fees and arch designation.</i>

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~~09. Maxillo-Facial Prosthetics.~~

<b>TABLE 082.09— MAXILLO-FACIAL PROSTHETICS</b>	
<b>Dental Code</b>	<b>Description</b>
D5931	<i>Obturator prosthesis, surgical. Narrative required when prior authorizing. Requires prior authorization.</i>
D5932	<i>Obturator prosthesis, definitive. Narrative required when prior authorizing. Requires prior authorization.</i>
D5933	<i>Obturator prosthesis, modification. Narrative required when prior authorizing. Requires prior authorization.</i>
D5934	<i>Mandibular resection prosthesis with guide flange. Narrative required when prior authorizing. Requires prior authorization.</i>
D5935	<i>Mandibular resection prosthesis without guide flange. Narrative required when prior authorizing. Requires prior authorization.</i>
D5936	<i>Obturator prosthesis, interim. Narrative required when prior authorizing. Requires prior authorization.</i>
D5951	<i>Feeding aid. Narrative required when prior authorizing. Requires prior authorization.</i>

<b>TABLE 082.09 – MAXILLO-FACIAL PROSTHETICS</b>	
D5952	<del>Speech aid prosthesis, pediatric. Narrative required when prior authorizing. Requires prior authorization.</del>
D5953	<del>Speech aid prosthesis, adult. Narrative required when prior authorizing. Requires prior authorization.</del>
D5954	<del>Palatal augmentation prosthesis. Narrative required when prior authorizing. Requires prior authorization.</del>
D5955	<del>Palatal lift prosthesis, definitive. Narrative required when prior authorizing. Requires prior authorization.</del>
D5958	<del>Palatal lift prosthesis, interim. Narrative required when prior authorizing. Requires prior authorization.</del>
D5959	<del>Palatal life prosthesis, modification. Narrative required when prior authorizing. Requires prior authorization.</del>
D5960	<del>Speech aid prosthesis, modification. Narrative required when prior authorizing. Requires prior authorization.</del>
D5982	<del>Surgical stent. Narrative required when prior authorizing. Requires prior authorization.</del>
D5988	<del>Surgical splint. Narrative required when prior authorizing. Requires prior authorization.</del>
D5999	<del>Unspecified maxillofacial prosthesis. Narrative required when prior authorizing. Requires prior authorization.</del>

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~~10. Fixed Prosthodontics.~~

<b>TABLE 082.10 – FIXED PROSTHODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
<del>Other Fixed Prosthetic Services.</del>	
D6930	<del>Re-cement fixed partial denture.</del>
D6980	<del>Fixed partial denture repair.</del>
D6999	<del>Unspecified fixed prosthodontic procedure, by report. Narrative required when prior authorizing. Requires prior authorization.</del>

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~~11. Oral Surgery.~~

<b>TABLE 082.11 – ORAL SURGERY</b>	
<b>Dental Code</b>	<b>Description</b>
<del>a. Simple Extraction.</del>	
D7111	<del>Extraction, coronal remnants—deciduous tooth. Including soft tissue retained coronal remnants.</del>
D7140	<del>Extraction, erupted tooth or exposed root, routine removal.</del>

<b>TABLE 082.11—ORAL SURGERY</b>	
<b>Dental Code</b>	<b>Description</b>
<b>b. Surgical Extractions.</b>	
D7210	<i>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.</i>
D7220	<i>Removal of impacted tooth—soft tissue. Occlusal surface of tooth covered by soft tissue; requires mucoperiosteal flap elevation. Tooth designation required.</i>
D7230	<i>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.</i>
D7240	<i>Removal of impacted tooth—completely bony. Most or all of crown covered by bone; requires mucoperiosteal flap elevation, bone removal, and may require segmentalization of tooth. Tooth designation required.</i>
D7241	<i>Removal of impacted tooth—completely bony, with unusual surgical complications. Most or all of crown covered by bone; usually difficult or complicated due to factors such as nerve dissection required, separate closure of maxillary sinus required or aberrant tooth position. Allowed only when pathology is present. Tooth designation required.</i>
D7250	<i>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.</i>
<b>c. Other Surgical Procedures.</b>	
D7270	<i>Tooth reimplantation and/or stabilization of accidentally avulsed or displaced tooth and/or alveolus. Tooth designation required. Includes splinting and/or stabilization.</i>
D7280	<i>Surgical exposure of impacted or unerupted tooth for orthodontic reasons. Includes orthodontic attachments. Tooth designation required. Limited to participants under twenty-one (21) years of age.</i>
D7281	<i>Surgical exposure of impacted or unerupted tooth to aid eruption. Tooth designation required. Limited to participants under twenty-one (21) years of age.</i>
D7286	<i>Biopsy of oral tissue—soft. For surgical removal of specimen only.</i>
D7287	<i>Cytology sample collection via mild scraping of oral mucosa.</i>
<b>d. Alveoleplasty.</b>	
D7320	<i>Alveoleplasty not in conjunction with extractions—per quadrant. Quadrant designation is required.</i>
<b>e. Excision of Bone Tissue.</b>	
D7471	<i>Removal of lateral exostosis. Maxilla or mandible. Arch designation required.</i>
<b>f. Surgical Incision.</b>	
D7510	<i>Incision and drainage of abscess—intraoral soft tissue, including periodontal origins.</i>
<b>g. Repair of Traumatic Wounds.</b>	
D7910	<i>Suture of recent small wounds up to five (5) cm.</i>
<b>h. Other Repair Procedures.</b>	

<b>TABLE 082.11—ORAL SURGERY</b>	
<b>Dental Code</b>	<b>Description</b>
D7960	<i>Frenulectomy (frenectomy or frenotomy) - separate procedure. The frenum may be excised when the tongue has limited mobility; for large diastoma between teeth; or when the frenum interferes with a prosthetic appliance; or when it is the etiology of periodontal tissue disease.</i>
D7970	<i>Excision of hyperplastic tissue - per arch. Arch designation required.</i>
D7971	<i>Excision of pericoronal gingiva. Arch designation required.</i>
D7999	<i>Unspecified oral surgery, by report. Narrative required when prior authorizing. Requires prior authorization.</i>

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**12. Orthodontics.**

<b>TABLE 082.12—ORTHODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
<b>a. Limited Orthodontics.</b>	
<i>Orthodontic treatment with a limited objective, not involving the entire dentition may be directed at the only existing problem, or one aspect of a larger problem in which a decision is made to defer or forgo more comprehensive therapy.</i>	
D8010	<i>Limited orthodontic treatment of primary dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.</i>
D8020	<i>Limited orthodontic treatment of transitional dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.</i>
D8030	<i>Limited orthodontic treatment of adolescent dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.</i>
D8040	<i>Limited orthodontic treatment of adult dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.</i>
<b>b. Comprehensive Orthodontic Treatment.</b>	
<i>The coordinated diagnosis and treatment leading to the improvement of a participant's craniofacial dysfunction and/or dentofacial deformity including anatomical, functional, and aesthetic relationships. Treatment usually, but not necessarily, utilizes fixed orthodontic appliances, and can also include removable appliances, headgear, and maxillary expansion procedures. Must score at least eight (8) points on the State's Handicapping Malocclusion Index.</i>	
D8070	<i>Comprehensive orthodontic treatment of transition dentition. Models, panorex, and treatment plan are required when prior authorizing. Requires prior authorization.</i>
D8080	<i>Comprehensive orthodontic treatment of adolescent dentition, up to sixteen (16) years of age. Models, panorex, and treatment plan are required when prior authorizing. Requires prior authorization.</i>
D8090	<i>Comprehensive orthodontic treatment of adult dentition. Justification required. Models, panoramic film, and treatment plan are required when prior authorizing. Requires prior authorization.</i>
<b>c. Minor Treatment to Control Harmful Habits.</b>	



<b>TABLE 082.12—ORTHODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
D8210	<i>Removable appliance therapy. Removable indicates participant can remove; includes appliances for thumb sucking and tongue thrusting. Justification required when prior authorizing. Will be allowed up to two (2) adjustments when prior authorizing. Replacement appliances are not covered. Requires prior authorization.</i>
D8220	<i>Fixed appliance therapy. Fixed indicates participant cannot remove appliance; includes appliances for thumb sucking and tongue thrusting. Justification required when prior authorizing. Will be allowed up to two (2) adjustments when prior authorizing. Replacement appliances are not covered. Requires prior authorization.</i>
<b>d. Other Services:</b>	
D8670	<i>Adjustments monthly. When utilizing treatment codes D8070, D8080 or D8090 a maximum of twenty-four (24) adjustments over two (2) years will be allowed (twelve (12) per year) when prior authorizing. When utilizing treatment codes D8210 or D8220, two (2) adjustments will be allowed per treatment when prior authorizing. Requires prior authorization.</i>
D8680	<i>Orthodontic retention, removal of appliances, construction and placement of retainer(s). Replacement appliances are not covered. Includes both upper and lower retainer if applicable.</i>
D8691	<i>Repair of orthodontic appliance. Limited to one (1) occurrence.</i>
D8999	<i>Unspecified orthodontics. Narrative required when prior authorizing. No payment for lost or destroyed appliances. Requires prior authorization.</i>

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**13. ~~Adjunctive General Services.~~**

<b>TABLE 082.13—ADJUNCTIVE GENERAL SERVICES</b>	
<b>Dental Code</b>	<b>Description</b>
<b>a. Unclassified Treatment:</b>	
D9110	<i>Palliative (emergency) treatment of dental pain - minor procedure (open and drain abscess, etc.). Open and drain is included in the fee for root canal when performed during the same sitting. Tooth or quadrant designation required.</i>
<b>b. Anesthesia:</b>	
D9220	<i>Deep sedation/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.</i>
D9221	<i>Deep sedation/general anesthesia - each additional fifteen (15) minutes.</i>
D9230	<i>Analgesia - includes nitrous oxide.</i>
D9241	<i>Intravenous conscious sedation/analgesia - first thirty (30) minutes. Provider certification required.</i>
D9242	<i>Intravenous conscious sedation/analgesia - each additional fifteen (15) minutes. Provider certification required.</i>
<b>c. Professional Consultation:</b>	

**TABLE 082.13—ADJUNCTIVE GENERAL SERVICES**

<b>Dental Code</b>	<b>Description</b>
D9310	<i>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 participant's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the participant'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.</i>
<b>d. Professional Visits:</b>	
D9410	<i>House/Extended Care Facility Calls. Includes visits to nursing homes, long-term care facilities, hospice sites, institutions, etc. Report in addition to reporting appropriate code numbers for actual services performed. Limited to once per day per participant. To be used when participant's health restrictions require treatment at the house/extended care facility. If procedures are done in the hospital, use procedure code D9420.</i>
D9420	<i>Hospital Calls. May be reported when providing treatment in hospital or ambulatory surgical center, in addition to reporting appropriate code numbers for actual services performed. Limited once per day per participant. Not covered for routine preoperative and postoperative. If procedures are done in other than hospital or surgery center use procedure code D9410 found in this table.</i>
D9430	<i>Office visit for observation (during regularly scheduled hours). No other services performed.</i>
D9440	<i>Office visit after regularly scheduled hours.</i>
<b>e. Miscellaneous Service:</b>	
D9920	<i>Behavior Management. May be reported in addition to treatment provided when the participant is developmentally disabled, mentally ill, or is especially uncooperative and difficult to manage, resulting in the dental staff providing additional time, skill and/or assistance to render treatment. Notation and justification must be written in the participant's record identifying the specific behavior problem and the technique used to manage it. Allowed once per participant per day.</i>
D9930	<i>Treatment of complication (post-surgical)—unusual circumstances.</i>
D9940	<i>Occlusal guards—removable dental appliances which are designed to minimize the effects of bruxism (tooth grinding) and other occlusal factors. No payment for replacement of lost or destroyed appliances.</i>
D9951	<i>Occlusal adjustment, limited. May also be known as equilibration; reshaping the occlusal surfaces of teeth to create harmonious contact relationships between the maxillary and mandibular teeth. Presently includes discing/odontoplasty/enamoplasty. Typically reported on a per-visit basis. Allowed once every twelve (12) months.</i>
D9952	<i>Occlusal adjustment, complete. Occlusal adjustment may require several appointments of varying length and sedation may be necessary to attain adequate relaxation of the musculature. Study casts mounted on an articulating instrument may be used for analysis of occlusal disharmony. It is designed to achieve functional relationships and masticatory efficiency in conjunction with restorative treatment, orthodontics, orthognathic surgery, or jaw trauma, when indicated. Occlusal adjustment enhances the healing potential of tissues affected by the lesions of occlusal trauma. Justification required when prior authorizing. Requires prior authorization.</i>
D9999	<i>Unspecified adjunctive procedure, by report. Narrative required when prior authorizing. Requires prior authorization.</i>

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~~14. **Dental Codes For Adult Services.** The following dental codes are covered for adults after the month of their twenty-first birthday.~~

<b>TABLE 082.14 – DENTAL CODES FOR ADULTS</b>	
<b>Dental Code</b>	<b>Description</b>
<b>a. <del>Dental Diagnostic Procedures.</del></b> <del>The definitions for these codes are in Subsection 082.03 of these rules.</del>	
<del>i. <del>General Oral Evaluations.</del></del>	
<del>D0120</del>	<del>Periodic oral evaluation.</del>
<del>D0140</del>	<del>Limited oral evaluation.</del>
<del>D0150</del>	<del>Comprehensive oral evaluation.</del>
<del>ii. <del>Radiographs/Diagnostic Images.</del></del>	
<del>D0210</del>	<del>Intraoral—complete series.</del>
<del>D0220</del>	<del>Intraoral periapical—first film.</del>
<del>D0230</del>	<del>Intraoral periapical—each additional film.</del>
<del>D0270</del>	<del>Bitewing—single film.</del>
<del>D0272</del>	<del>Bitewings—two (2) films.</del>
<del>D0274</del>	<del>Bitewings—four (4) films.</del>
<del>D0277</del>	<del>Vertical bitewings—seven (7) to eight (8) films.</del>
<del>D0330</del>	<del>Panoramic film.</del>
<b>b. <del>Dental Preventive Procedures.</del></b> <del>The definitions for these codes are in Subsection 082.04 of these rules.</del>	
<del>i. <del>Dental Prophylaxis.</del></del>	
<del>D1110</del>	<del>Prophylaxis—adult.</del>
<del>ii. <del>Fluoride Treatments.</del></del>	
<del>D1204</del>	<del>Topical application of fluoride—prophylaxis not included—adult.</del>
<b>c. <del>Dental Restorative Procedures.</del></b> <del>The definitions for these codes are in Subsection 082.05 of these rules.</del>	
<del>i. <del>Amalgam Restorations.</del></del>	
<del>D2140</del>	<del>Amalgam—one (1) surface, primary or permanent.</del>
<del>D2150</del>	<del>Amalgam—two (2) surfaces, primary or permanent.</del>
<del>D2160</del>	<del>Amalgam—three (3) surfaces, primary or permanent.</del>
<del>D2161</del>	<del>Amalgam—four (4) or more surfaces, primary or permanent.</del>
<del>ii. <del>Resin Restorations.</del></del>	
<del>D2330</del>	<del>Resin—one (1) surface, anterior.</del>
<del>D2331</del>	<del>Resin—two (2) surfaces, anterior.</del>

<b>TABLE 082.14 – DENTAL CODES FOR ADULTS</b>	
<b>Dental Code</b>	<b>Description</b>
D2332	Resin - three (3) surfaces, anterior.
D2335	Resin - four (4) or more surfaces or involving incisal angle, anterior.
D2390	Resin based composite crown, anterior, primary or permanent.
D2391	Resin based composite - one (1) surface, posterior, primary or permanent.
D2392	Resin based composite - two (2) surfaces, posterior, primary or permanent.
D2393	Resin based composite - three (3) surfaces, posterior, primary or permanent.
D2394	Resin based composite - four (4) surfaces, posterior, primary or permanent.
<i>iii. Other Restorative Services.</i>	
D2920	Re-cement crown. Tooth designation required.
D2931	Prefabricated stainless steel crown - permanent tooth.
D2940	Sedative filling.
<b>d. Endodontics.</b> The definitions for these codes are in Subsection 082.06 of these rules.	
D3220	Therapeutic pulpotomy.
D3221	Pulpal debridement, permanent teeth.
<b>e. Periodontics.</b> The definitions for these codes are in Subsection 082.07 of these rules.	
<i>i. Non-Surgical Periodontal Service.</i>	
D4341	Periodontal scaling and root planing - four (4) or more contiguous teeth (per quadrant).
D4342	Periodontal scaling and root planing one (1) to three (3) teeth per quadrant.
D4355	Full mouth debridement.
<i>ii. Other Periodontal Services.</i>	
D4910	Periodontal maintenance procedures.
<b>f. Prosthodontics.</b> The definitions for these codes are in Subsection 082.08.b. of these rules.	
<i>i. Complete Dentures.</i>	
D5110	Complete denture - maxillary.
D5120	Complete denture - mandibular.
D5130	Immediate denture - maxillary.
D5140	Immediate denture - mandibular.
<i>ii. Partial Dentures.</i>	
D5211	Maxillary partial denture - resin base.
D5212	Mandibular partial denture - resin base.
<i>iii. Adjustments to Dentures.</i>	

**TABLE 082.14 – DENTAL CODES FOR ADULTS**

<b>Dental Code</b>	<b>Description</b>
D5410	Adjust complete denture – maxillary.
D5411	Adjust complete denture – mandibular.
D5421	Adjust partial denture – maxillary.
D5422	Adjust partial denture – mandibular.
<i>iv. Repairs to Complete Dentures.</i>	
D5510	Repair broken complete denture base.
D5520	Replace missing or broken tooth – complete denture, each tooth.
<i>v. Repairs to Partial Dentures.</i>	
D5610	Repair resin denture base.
D5620	Repair cast framework.
D5630	Repair or replace broken clasp.
D5640	Replace broken teeth, per tooth.
D5650	Add tooth to existing partial denture.
D5660	Add clasp to existing partial denture.
D5670	Replace all teeth and acrylic on cast metal framework (maxillary).
D5671	Replace all teeth and acrylic on cast metal framework (mandibular).
<i>vi. Denture Relining.</i>	
D5730	Reline complete maxillary denture (chairside).
D5731	Reline complete mandibular denture (chairside).
D5740	Reline maxillary partial denture (chairside).
D5741	Reline mandibular partial denture (chairside).
D5750	Reline complete maxillary denture (laboratory).
D5751	Reline complete mandibular denture (laboratory).
D5760	Reline maxillary partial denture (laboratory).
D5761	Reline mandibular partial denture (laboratory).
<b>g. Oral Surgery.</b> The definitions for these codes are in Subsection 082.11 of these rules.	
<i>i. Extractions.</i>	
D7111	Extraction, coronal remnants – deciduous tooth.
D7140	Extraction, erupted tooth or exposed root, routine removal.
<i>ii. Surgical Extractions</i>	
D7210	Surgical removal of erupted tooth.
D7220	Removal of impacted tooth – soft tissue.

<b>TABLE 082.14 – DENTAL CODES FOR ADULTS</b>	
<b>Dental Code</b>	<b>Description</b>
<del>D7230</del>	<del>Removal of impacted tooth – partially bony.</del>
<del>D7240</del>	<del>Removal of impacted tooth – completely bony.</del>
<del>D7241</del>	<del>Removal of impacted tooth – completely bony, with unusual surgical complications.</del>
<del>D7250</del>	<del>Surgical removal of residual tooth roots.</del>
<del>iii. Other Surgical Procedures.</del>	
<del>D7286</del>	<del>Biopsy of oral tissue – soft. For surgical removal of specimen only.</del>
<del>iv. Surgical Incision.</del>	
<del>D7510</del>	<del>Incision and drainage of abscess – including periodontal origins.</del>
<del>v. Repair of Traumatic Wounds.</del>	
<del>D7910</del>	<del>Suture of recent small wounds up to five (5) cm.</del>
<del>vi. Other Repair Procedures.</del>	
<del>D7970</del>	<del>Excision of hyperplastic tissue.</del>
<del>D7971</del>	<del>Excision of pericoronal gingiva.</del>
<del>h. <b>Adjunctive General Services.</b> The definitions for these codes are in Subsection 082.13 of these rules.</del>	
<del>i. Unclassified Treatment.</del>	
<del>D9110</del>	<del>Palliative (emergency) treatment of dental pain.</del>
<del>ii. Anesthesia.</del>	
<del>D9220</del>	<del>Deep sedation/general anesthesia – first thirty (30) minutes.</del>
<del>D9221</del>	<del>Deep sedation/general anesthesia – each additional fifteen (15) minutes.</del>
<del>D9230</del>	<del>Analgesia – includes nitrous oxide.</del>
<del>D9241</del>	<del>Intravenous conscious sedation/analgesia – first thirty (30) minutes.</del>
<del>D9242</del>	<del>Intravenous conscious sedation/analgesia – each additional fifteen (15) minutes.</del>
<del>iii. Professional Consultation.</del>	
<del>D9310</del>	<del>Consultation requested by other dentist or physician.</del>
<del>iv. Professional Visits.</del>	
<del>D9410</del>	<del>House, institutional, or extended care facility calls. house/extended care facility.</del>
<del>D9420</del>	<del>Hospital calls.</del>
<del>D9440</del>	<del>Office visit after regularly scheduled hours.</del>
<del>D9930</del>	<del>Treatment of complication (post-surgical) – unusual circumstances.</del>

(5-8-09)

~~15. **Denturist Procedure Codes.**~~

(5-8-09)

~~a. The following codes are valid denturist procedure codes:~~

<b>TABLE 082.15.a.— DENTURIST PROCEDURE CODES</b>	
<b>Dental Code</b>	<b>Description</b>
D5110	<del>Complete denture, upper</del>
D5120	<del>Complete denture, lower</del>
D5130	<del>Immediate denture, upper</del>
D5140	<del>Immediate denture, lower</del>
D5410	<del>Adjust complete denture, upper</del>
D5411	<del>Adjust complete denture, lower</del>
D5421	<del>Adjust partial denture, upper</del>
D5422	<del>Adjust partial denture, lower</del>
D5510	<del>Repair broken complete denture base; arch designation required.</del>
D5520	<del>Replace missing or broken teeth, complete denture (each tooth); six (6) teeth maximum. Tooth designation required.</del>
D5610	<del>Repair resin saddle or base; arch designation required.</del>
D5620	<del>Repair cast framework; arch designation required.</del>
D5630	<del>Repair or replace broken clasp; arch designation required.</del>
D5640	<del>Replace broken teeth per tooth; tooth designation required.</del>
D5650	<del>Add tooth to existing partial denture; tooth designation required.</del>
D5660	<del>Add clasp to existing partial denture; not requiring the altering of oral tissue or natural teeth. Tooth designation required.</del>
D5730	<del>Reline complete upper denture (chairside)</del>
D5731	<del>Reline complete lower denture (chairside)</del>
D5740	<del>Reline upper partial denture (chairside)</del>
D5741	<del>Reline lower partial denture (chairside)</del>
D5750	<del>Reline complete upper denture (laboratory)</del>
D5751	<del>Reline complete lower denture (laboratory)</del>
D5760	<del>Reline upper partial denture (laboratory)</del>
D5761	<del>Reline lower partial denture (laboratory)</del>
D5899	<del>Unable to deliver full denture. Prior authorization required. If the participant does not complete the process for the denture, leaves the state, cannot be located or dies, laboratory and professional fees may be billed to Medicaid with an invoice listing lab fees and arch designation.</del>

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~~b. Medicaid allows complete and immediate denture construction once every five (5) years. Denture reline is 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.~~

(5-8-09)

**03. Dental Coverage and Limitations for Adults.** Adults who are not pregnant are limited to the

dental services coverage using the Current Dental Terminology (CDT) codes listed in the following table:

<b>TABLE 083.03 - ADULT DENTAL SERVICES CODES</b>	
<b>Dental Code</b>	<b>Description</b>
<u>D0140</u>	<u>Limited oral evaluation. Problem focused</u>
<u>D0220</u>	<u>Intraoral periapical film</u>
<u>D0230</u>	<u>Additional intraoral periapical films</u>
<u>D0330</u>	<u>Panoramic film</u>
<u>D7140</u>	<u>Extraction</u>
<u>D7210</u>	<u>Surgical removal of erupted tooth</u>
<u>D7220</u>	<u>Removal of impacted tooth, soft tissue</u>
<u>D7230</u>	<u>Removal of impacted tooth, partially bony</u>
<u>D7240</u>	<u>Removal of impacted tooth, completely bony</u>
<u>D7241</u>	<u>Removal of impacted tooth, with complications</u>
<u>D7250</u>	<u>Surgical removal of residual tooth roots</u>
<u>D7260</u>	<u>Oroantral fistula closure</u>
<u>D7261</u>	<u>Primary closure of sinus perforation</u>
<u>D7285</u>	<u>Biopsy of hard oral tissue</u>
<u>D7286</u>	<u>Biopsy of soft oral tissue</u>
<u>D7450</u>	<u>Excision of malignant tumor &lt;1.25 cm</u>
<u>D7451</u>	<u>Excision of malignant tumor &gt;1.25 cm</u>
<u>D7510</u>	<u>Incision and drainage of abscess</u>
<u>D7511</u>	<u>Incision and drainage of abscess, complicated</u>
<u>D9110</u>	<u>Minor palliative treatment of dental pain</u>
<u>D9220</u>	<u>Deep sedation/anesthesia first 30 minutes</u>
<u>D9221</u>	<u>Regional block anesthesia</u>
<u>D9230</u>	<u>Analgesia, anxiolysis, nitrous oxide</u>
<u>D9241</u>	<u>IV conscious sedation first 30 minutes</u>
<u>D9242</u>	<u>IV conscious sedation each additional 15 minutes</u>
<u>D9248</u>	<u>Non IV conscious sedation</u>
<u>D9420</u>	<u>Hospital call</u>
<u>D9610</u>	<u>Therapeutic parenteral drug single administration</u>
<u>D9630</u>	<u>Other drugs and/or medicaments by report</u>

(7-1-11)T

**04. Dental Coverage for Pregnant Women.** Pregnant women on Medicaid's Basic, Enhanced, or PW plans are covered for preventative and problem-focused exams, diagnostic, restorative, endodontic, periodontic, and



oral surgery benefits. Specific information about pregnant women is available online at dental services. (7-1-11)T

**05. Benefit Limitations.** The dental insurance contractor may establish limitations and restrictions for benefits according to the terms of its contract with the Department. (7-1-11)T

**0834. DENTAL SERVICES: PROCEDURAL REQUIREMENTS.**

Providers must enroll in the Idaho Smiles network with the dental insurance contractor and meet both credentialing and quality assurance guidelines of the contractor. (7-1-11)T

~~01. **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 a 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. Administer Idaho Smiles.~~ The contractor is responsible for administering the Idaho Smiles program, including but not limited to dental claims processing, payments to providers, customer service, eligibility verification, and data reporting. (5-8-09)(7-1-11)T

~~02. **Denturist Prior Authorization.** Prior authorization is not required for the dentist procedures except for dental code D5899 found in Subsection 082.15.a. of these rules. The contractor is responsible for authorization of covered dental services that require authorization prior to claim payment.~~ (5-8-09)(7-1-11)T

**03. Crowns. Complaints and Appeals.** Complaints and appeals are handled through a process between Idaho Smiles and the Department that is in compliance with state and federal requirements. (5-8-09)(7-1-11)T

~~a. When submitting for prior authorization, either an x ray showing the root canal or an x ray with a justification detailing the reason for the crown is required.~~ (5-8-09)

~~b. Requests for re doing crowns must be submitted for prior approval and include x ray and justification.~~ (5-8-09)

**0845. DENTAL SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

All dental services must be documented in the participant's record to include: procedure, surface, and tooth number, if applicable. This record must be maintained for a period of six (6) years. Providers are credentialed by the contractor to ensure they meet licensing requirements of the Idaho Board of Dentistry standards. Providers' duties are based on the contract requirements and are monitored and enforced by the contractor. (5-8-09)(7-1-11)T

**0856. DENTAL SERVICES: PROVIDER REIMBURSEMENT.**

Medicaid reimburses dentists and denturists for procedures on a fee-for-service basis. Usual and customary charges 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 for the service, and the participant cannot be billed for the difference between the billed amount and the Medicaid allowed amount. The Idaho Smiles administrator reimburses dental providers on a fee-for-service basis under a Department approved fee schedule. (5-8-09)(7-1-11)T

**087. DENTAL SERVICES: QUALITY ASSURANCE.**

Providers are subject to the contractor's Quality Assurance guidelines including monitoring for potential fraud, overutilization, or abuse of Medicaid. The contractor is required to share such potential cases with the Medicaid Fraud Unit as discovered. (7-1-11)T

**0868. -- 089. (RESERVED)**

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1104**

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

**EFFECTIVE DATE:** The effective date of these temporary rules is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 56-203(7), 56-203(9), 56-250 through 56-257, 56-260 through 56-266, 56-1504, 56-1505, and 56-1511 and 56-1601 through 56-1610, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule changes in this docket implement legislative intent language in House Bill 260 passed by the 2011 Legislature regarding nursing facilities and intermediate care facilities for people with intellectual disabilities. The legal authority section for repealed, amended, and new statutes is also being updated in this rulemaking. Other rule changes in this docket continue reimbursement methodologies for mental health clinics, developmental disability agencies and rehabilitative mental health service providers that were implemented in 2010.

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

These rule changes implement statutory changes adopted by the 2011 Legislature in House Bill 260, effective July 1, 2011.

**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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact of this docket represents \$1,023,740 of the \$4,700,000 general fund savings related to pricing and inflation freeze changes identified in HB 260. This savings was included in the Department's SFY 2012 appropriations.

Changes for reimbursement methodologies to mental health clinics, developmental disability agencies, and rehabilitative mental health service providers, are designed to be budget neutral and have no anticipated fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is in response to 2011 legislation.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Robert Kellerman at (208) 364-1994.

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 August 24, 2011.

DATED this 7th day of July, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0310-1104**

**000. LEGAL AUTHORITY.**

**01. Rulemaking Authority.** The Idaho Department of Health and Welfare has the authority to promulgate public assistance rules under Section 56-202(b), [and 56-264, 56-1610](#), Idaho Code. ~~(3-19-07)~~[\(7-1-11\)T](#)

**02. General Administrative Authority.** Title XIX and Title XXI, of the Social Security Act, as amended, and the companion federal regulations, are the basic authority for administration of the federal program. General administrative duties for the Department are found under Section 56-202, Idaho Code. (3-19-07)

**03. Administration of the Medical Assistance Program.** (3-19-07)

**a.** Section 56-203(7), Idaho Code, empowers the Department to define persons entitled to medical assistance. (3-19-07)

**b.** Section 56-203(9), Idaho Code, empowers the Department to identify the amount, duration, scope of care, and services to be purchased as medical assistance on behalf of individuals eligible to receive benefits under the Medical Assistance Program. (3-19-07)

**c.** Sections 56-250 through 56-257, [and 56-260 through 56-266](#), Idaho Code, establish minimum standards that enable these rules. ~~(3-19-07)~~[\(7-1-11\)T](#)

**04. Fiscal Administration.** (3-19-07)

**a.** Fiscal administration of these rules is authorized by Title XIX and Title XXI of the Social Security Act, as well as 42 CFR Part 447 and the Provider Reimbursement Manual (PRM) Part I and Part II found in CMS Publication 15-1 and 15-2. Provisions of the PRM, as incorporated by reference in Section 004 of these rules, apply unless otherwise provided for in these rules. (3-19-07)

**b.** Title 56, Chapter 1, Idaho Code, establishes standards for provider payment for certain Medicaid providers. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**119. ~~(RESERVED)~~ ENHANCED OUTPATIENT MENTAL HEALTH SERVICES: PROVIDER REIMBURSEMENT.**

**01. Medical Assistance Upper Limit.** The Department's medical assistance upper limit for reimbursement is the lower of: (7-1-11)T

**a.** The mental health clinic's actual charge; or (7-1-11)T

**b.** The allowable charge as established by the Department's medical assistance fee schedule. Mental health clinic reimbursement is subject to the provisions of 42 CFR 447.321. (7-1-11)T

**02. Reimbursement.** (7-1-11)T

**a.** For physician services where mid-levels are authorized to administer mental health services, the Department reimburses based on the Department's medical assistance fee schedule. (7-1-11)T

**b.** For other health professionals authorized to administer mental health services, the statewide reimbursement rate for mental health services was derived by using Bureau of Labor Statistics mean wage for the direct care staff providing the service, adjusted for employment-related expenditures, program-related costs, and general and administrative costs based on a cost survey as described in Subsection 119.03 of this rule. Reimbursement rates for partial care, and social history and evaluation are set at a percentage of the statewide target reimbursement rate. (7-1-11)T

**03. Cost Survey.** The Department will conduct a cost survey every five (5) years from a statistically appropriate number of provider association representatives in order to obtain cost data for employment-related expenditures, program-related costs, and general and administrative costs. (7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR): PROVIDER REIMBURSEMENT.**

Payment for PSR agency services must be in accordance with rates established by the Department. The rate paid for services includes documentation. (5-8-09)

**01. Duplication.** Payment for services must not duplicate payment made to public or private entities under other program authorities for the same purpose. (3-19-07)

**02. Number of Staff Able to Bill.** Only one (1) staff member may bill for an assessment, individualized treatment plan, or case review when multiple agency staff are present. (5-8-09)

**03. Medication Prescription and Administration.** Medication prescription and administration may be billed only by physicians and other medical staff qualified under Title 54, Chapter 18, Idaho Code. (3-19-07)

**04. Recoupment.** Billing for services and receiving reimbursement for services that were not rendered or failure to comply with these rules must be cause for recoupment of payments for services, sanctions, or both. (3-19-07)

**05. Access to Information.** Upon request, the provider must provide the Department with access to all information required to review compliance with these rules. Failure by the provider to comply with such a request must result in termination of the Medicaid PSR Provider Agreement. (3-19-07)

**06. Evaluations and Tests.** Evaluations and tests are a reimbursable service if provided in accordance with the requirements in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (5-8-09)

**07. Psychiatric or Medical Inpatient Stays.** Community reintegration services may be provided during the last thirty (30) days of inpatient stay or if the inpatient stay is not expected to last longer than thirty (30) days, when not duplicating those services included in the responsibilities of the inpatient facility. Treatment services are the responsibility of the facility. (5-8-09)

**08. Reimbursement.** (7-1-11)T

**a.** For physician services where mid-levels are authorized to administer mental health services, the Department reimburses based on the Department's medical assistance fee schedule. (7-1-11)T

**b.** For other health professionals authorized to administer rehabilitative mental health services, the statewide target reimbursement rate for rehabilitative mental health services was derived by using Bureau of Labor Statistics mean wage for the direct care staff providing the service, adjusted for employment-related expenditures, program-related costs, and general and administrative costs based on a cost survey as described in Subsection 140.09 of this rule. Reimbursement rates for intake assessment, functional assessment, individual and group skill training, and community reintegration are set at a percentage of the statewide target reimbursement rate. (7-1-11)T

**c.** Crisis assistance for adults with serious and persistent mental illness (SPMI) will be paid based on the same reimbursement methodology as service coordination crisis intervention services defined in Subsection 736.09 of these rules. (7-1-11)T

**09. Cost Survey.** The Department will conduct a cost survey every five (5) years from a statistically appropriate number of provider association representatives in order to obtain cost data for employment-related expenditures, program-related costs, and general and administrative costs. (7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**235. NURSING FACILITY: PROVIDER REIMBURSEMENT.**

**01. Payment Methodology.** Nursing facilities will be reimbursed in accordance with the payment methodologies as described in Sections 236 through 295 of these rules. (3-19-07)

**02. Date of Discharge.** Payment by the Department for the cost of long term care is to ~~include~~ the date of the participant's discharge ~~only if the discharge occurred after 3 p.m. and is not discharged to a related ICF/IH provider.~~ If a Medicaid patient dies in a nursing home, his date of death is covered regardless of the time of occurrence. If an admission and a discharge occur on the same date, then one (1) day of care will be deemed to exist. ~~(3-19-07)~~(7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**257. NURSING FACILITY: DEVELOPMENT OF THE RATE.**

Nursing facility rates are prospective, with new rates effective July 1st of each year, and are recalculated annually with quarterly adjustments for case mix. The rate for a nursing facility is the sum of the cost components described in Subsection 257.04 through 257.09~~8~~ of this rule. In no case will the rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is made as computed by the lower of costs or customary charges. For the rate period of July 1, 2011, through June 30, 2012, rates will be calculated using cost reports ended in calendar year 2010 with no allowance for inflation to the rate period of July 1, 2011, through June 30, 2012. ~~(5-8-09)~~(7-1-11)T

**01. Applicable Case Mix Index (CMI).** The Medicaid CMI used in establishing each facility's rate is calculated based on the most recent assessment for each Medicaid resident in the nursing facility on the first day of the month of the preceding quarter (for example, assessments as of April 1 are used to establish the CMI needed to

establish rates for the quarter beginning July 1st). Facility-wide CMI is calculated based on the most recent assessment for all residents in the nursing facility. The CMI is recalculated quarterly and each nursing facility's rate is adjusted accordingly. A facility-wide CMI is also established each year by averaging four (4) calendar quarter CMIs for the cost reporting period from historical data to represent each fiscal quarter in the cost reporting period (for example, an October 1 CMI would represent the fiscal quarter ended September 30th). (3-19-07)

**02. Applicable Cost Data.** The cost data used in establishing the cost components of the rate calculation are from the audited or unaudited cost report which ended during the previous calendar year (for example, cost reports ending during the period from January 1, 1998 - December 31, 1998 are used in setting rates effective July 1, 1999). The draft audit of a cost report submitted by a facility will be issued by the Department no later than five (5) months after the date all information required for completion of the audit is filed with the Department. (3-19-07)

**03. Interim Rates.** Nursing facilities with unaudited cost reports are given an interim rate established by the Department until a rate is calculated based on an audited cost report. When audited data are available, a retroactive adjustment to the payment rate is made through the calculation of the finalized rate. (3-19-07)

**04. Direct Care Cost Component.** The direct care cost component of a nursing facility's rate is determined as follows: (3-19-07)

**a.** The direct care per diem cost limit applicable to the rate period for a nursing facility type (free-standing and urban hospital-based nursing facility or rural hospital-based nursing facility) is identified. The identified direct care cost limit is divided by the statewide average CMI for the cost reporting period, and then multiplied by the nursing facility's facility-wide CMI for the cost reporting period to derive the adjusted direct care per diem cost limit. (3-19-07)

**b.** The adjusted direct care per diem cost limit is compared to the nursing facility's inflated direct care per diem costs. The lower of the two (2) amounts is then case mix adjusted. (3-19-07)

**i.** If the adjusted direct care per diem cost limit is lower, the adjusted limit is divided by the nursing facility's facility-wide CMI for the cost reporting period, and then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period to arrive at the direct care cost component. (3-19-07)

**ii.** If the inflated direct care per diem costs are lower, these costs, minus raw food and Medicaid related ancillary costs, are divided by the nursing facility's facility-wide CMI for the cost reporting period, then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period. Raw food and Medicaid related ancillary costs are then added back to arrive at the direct care cost component. (3-19-07)

**05. Indirect Care Cost Component.** The indirect care cost component of a facility's rate is the lesser of the facility's inflated indirect care per diem costs, or the indirect per diem cost limit for that type of provider -- free-standing and urban hospital-based nursing facilities, or rural hospital-based nursing facilities. (3-19-07)

**06. Costs Exempt From Limitation.** Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined in Section 264 of these rules. (3-19-07)

**07. Property Reimbursement.** The property reimbursement component is calculated in accordance with Section 275 and Subsection 240.19 of these rules. (3-19-07)

**08. Revenue Offset.** Revenues from products or services provided to nonpatients will be offset from the corresponding rate component(s) as described in Section 257 of these rules. (3-19-07)

**258. NURSING FACILITY: COST LIMITS BASED ON COST REPORT.**

Each July 1st cost limitations will be established for nursing facilities based on the most recent audited cost report with an end date of June 30th of the previous year or before. Calculated limitations will be effective for a one (1) year period, from July 1 through June 30th of each year, which is the rate year. For the rate period of July 1, 2011, through June 30, 2012, the direct and indirect cost limits will be fixed at the cost limits established for the rate period of July 1, 2010, through June 30, 2011. (~~5-8-09~~)(7-1-11)T

**01. Percentage Above Bed-Weighted Median.** Prior to establishing the first “shadow rates” at July 1, 1999, the estimated Medicaid payments under the previous retrospective system for the year period from July 1, 1999, through June 30, 2000, will be calculated. This amount will then be used to model the estimated payments under the case mix system set forth in Sections 255 through 257 of these rules. The percentages above the bed-weighted median, for direct and indirect costs, will be established at a level that approximates the same amount of Medicaid expenditures as would have been produced by the retrospective system. The percentages will also be established to approximate the same distribution of total Medicaid dollars between the hospital-based and freestanding nursing facilities as existed under the retrospective system. Once the percentage is established, it will be used to calculate the limit by multiplying the bed-weighted median per diem direct cost times the calculated percentage for that class of provider. There will be a direct and indirect percentage that is applied to freestanding and urban hospital-based nursing facilities, and a higher direct and indirect percentage that is applied to rural hospital-based nursing facilities. Once established, these percentages will remain in effect for future rate setting periods.

(3-19-07)

**02. Direct Cost Limits.** The direct cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be normalized and arrayed from high to low, with freestanding and hospital-based nursing facilities included in the same array, and the bed-weighted median will be computed.

(3-19-07)

**03. Indirect Cost Limits.** The indirect cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be arrayed, with freestanding and hospital-based nursing facilities included in the same array, and the bed-weighted median will be computed.

(3-19-07)

**04. Limitation on Increase or Decrease of Cost Limits.** Increases in the direct and indirect cost limits will be determined by the limitations calculated in the most recent base year, indexed forward each year from the midpoint of the base year to the midpoint of the rate year by the inflation factor plus one percent (1%) per annum. The calculated direct and indirect cost limits will not be allowed to decrease below the limitations effective in the base year. The maximum rate of growth on the cost limits, and the minimum cost limitation, will be examined by the oversight committee periodically to determine which factors to use in the calculation of the limitations effective in the new base year and forward.

(3-29-10)

**05. Costs Exempt From Limitations.** Costs exempt from limitations include property taxes, property insurance, and utilities. These costs will be reimbursed on a per diem basis and will not be included in the calculation of the direct or indirect care component. However, property taxes and property insurance will be subject to minimum occupancy levels as defined in Section 278 of these rules.

(3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**307. PERSONAL CARE SERVICES: PROVIDER REIMBURSEMENT.**

**01. Reimbursement Rate.** Personal assistance providers will be paid a uniform reimbursement rate for service as established by the Department on an annual basis ~~according to Section 39-5606, Idaho Code.~~ Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department.

~~(3-19-07)~~(7-1-11)T

**02. Calculated Fee.** The fee calculated for personal care provider reimbursement includes a basic rate for services and mileage. No separate charges for mileage will be paid by the Department for non-medical transportation, unless approved by the RMS under a Home and Community-Based Services (HCBS) waiver, or provider transportation to and from the participant's home. Fees will be calculated as provided in Subsections 307.03 through 307.07 of these rules.

(3-19-07)

**03. Weighted Average Hourly Rates.** Annually Medicaid will conduct a poll of all Idaho nursing facilities and ICFs/ID, and establish the weighted average hourly rates (WAHR) for nursing facility industry employees in comparable positions (i.e. RN, QMRP, certified and non-certified nurse's aides) in Idaho to be used in calculating the reimbursement rate to be effective on July 1st of that year. (3-29-10)

**04. Payment for Personal Assistance Agency.** (3-4-11)

**a.** The Department will establish Personal Assistance Agency rates for personal assistance services based on the WAHR ~~in accordance with Section 39-5606, Idaho Code~~. For State Fiscal Year 2011, this rate will only be adjusted if the prevailing hourly rate for comparable positions is less than the rate paid during State Fiscal Year 2010.

Personal Assistance Agencies	WAHR x supplemental component	=	\$ amount/hour
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~~(3-4-11)~~(7-1-11)T

**b.** Beginning with State Fiscal Year 2011, every five (5) years the Department will conduct a survey of all Personal Assistance Agencies which requests the number of hours of all Direct Care Staff and the costs involved for all travel, administration, training, and all payroll taxes and fringe benefits. Based on the survey conducted, the Department will calculate a supplemental component using costs reported for travel, administration, training, and all payroll taxes and fringe benefits. The survey data is the cost information collected during the prior State Fiscal Year. (3-4-11)

**c.** Based on the survey conducted, provided that at least eighty-five percent (85%) of all Personal Assistance Agencies respond, the Department will calculate a supplemental component using costs reported for travel, administration, training, and all payroll taxes and fringe benefits. The survey data is the cost information collected during the prior State Fiscal Year. If less than eighty-five percent (85%) of all Personal Assistance Agencies respond, the rate will remain at the WAHR rate without the supplemental component. (3-4-11)

**05. Payment Levels for Adults in Residential Care or Assisted Living Facilities or Certified Family Homes.** Adult participants living in Residential Care or Assisted Living Facilities (RCALF) or Certified Family Homes will receive personal care services at a rate based on their care level. Each level will convert to a specific number of hours of personal care services. (3-19-07)

**a.** Reimbursement Level I -- One point twenty-five (1.25) hours of personal care services per day or eight point seventy-five (8.75) hours per week. (3-19-07)

**b.** Reimbursement Level II -- One point five (1.5) hours of personal care services per day or ten point five (10.5) hours per week. (3-19-07)

**c.** Reimbursement Level III -- Two point twenty-five (2.25) hours of personal care services per day or fifteen point seventy-five (15.75) hours per week. (3-19-07)

**d.** Reimbursement Level IV - One point seventy-nine (1.79) hours of personal care services per day or twelve point five (12.5) hours per week. This level will be assigned based on a documented diagnosis of mental illness, intellectual disability, or Alzheimer's disease. If an individual is assessed as Level III with a diagnosis of mental illness, intellectual disability, or Alzheimer's disease the provider reimbursement rate will be the higher amount as described in Subsection 307.05.c. of these rules. (3-19-07)

**06. Attending Physician Reimbursement Level.** The attending physician or authorized provider will be reimbursed for services provided using current payment levels and methodologies for other services provided to eligible participants. (3-19-07)

**07. Supervisory RN and QMRP Reimbursement Level.** The supervisory RN and QMRP will be reimbursed at a per visit amount established by the Department for supervisory visits. Participant evaluations and Care Plan Development will be reimbursed at a rate established by the Department, following authorization by the RMS. (3-19-07)



a. The number of supervisory visits by the RN or QMRP to be conducted per calendar quarter will be approved as part of the PCS care plan by the RMS. (3-19-07)

b. Additional evaluations or emergency visits in excess of those contained in the approved care plan will be authorized when needed by the RMS. (3-19-07)

**08. Payment for PCS Family Alternate Care Home.** The Department will establish PCS Family Alternate Care Home rates for personal assistance services based on the WAHR ~~in accordance with Section 39-5606, Idaho Code.~~ Beginning with State Fiscal Year 2011, every five (5) years the Department will conduct a survey of all Personal Assistance Agency's which requests the number of hours of all Direct Care Staff and the indirect costs involved such as administration, and training. Based on the survey conducted, the Department will calculate a supplemental component using costs reported for administration, and training. The survey data is the cost information collected during the prior State Fiscal Year.

PCS Family Alternate Care Home	Children's PCS Assessment Weekly Hours x (WAHR x supplemental component)	=	\$ amount/week
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~~(3-4-11)~~(7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**622. ICF/ID: PRINCIPLE PROSPECTIVE RATES.**

Providers of ICF/ID facilities will be paid a per diem rate which, with certain exceptions, is not subject to an audit settlement. The per diem rate for a fiscal period will be based on audited historical costs adjusted for inflation. The provider will report these cost items in accordance with other provisions of this chapter or the applicable provisions of PRM consistent with this chapter. Sections 622 through 628 of these rules provide procedures and specifications necessary to implement the provisions and accomplish the objectives of the payment system for ICF/ID providers. Total payment will include the following components: Property reimbursement, capped costs, ~~an efficiency increment,~~ exempt costs, and excluded costs. Except as otherwise provided in this section, ~~ICF/ID providers will be reimbursed in rates calculated for state fiscal year 2010~~2~~ (July 1, 200~~9~~11 through June 30, 2010~~2~~) at the same rate of reimbursement that was paid in state fiscal year 2009 (July 1, 2008 through June 30, 2009) will be calculated by using finalized cost reports ended in calendar year 2009 with no cost or cost limit adjustments for inflation to the rate period of July 1, 2011, through June 30, 2012.~~ (3-29-10)(7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**659. DDA SERVICES: PROVIDER REIMBURSEMENT.**

~~Payment for agency services must be in accordance with rates established by the Department.~~ (3-19-07)

**01. Reimbursement.** (7-1-11)T

**a.** For physician services where mid-levels are authorized to administer developmental disability services, the Department reimburses based on the Department's Medical Assistance fee schedule. (7-1-11)T

**b.** For other health professional authorized to administer developmental disability services, the statewide reimbursement rate for developmental disability services was derived by using Bureau of Labor Statistics mean wage for the direct care staff providing the service, adjusted for employment-related expenditures, program-related costs, and general and administrative costs based on a cost survey as described in Subsection 656.02 of this rule. (7-1-11)T

02. Cost Survey. The Department will conduct a cost survey every five (5) years from a statistically appropriate number of provider association representatives in order to obtain cost data for employment-related expenditures, program-related costs, and general and administrative costs. (7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**706. ADULT DD WAIVER SERVICES: PROVIDER REIMBURSEMENT.**

**01. Fee for Service.** Waiver service providers will be paid on a fee for service basis based on the type of service provided as established by the Department. (3-19-07)

**02. Claim Forms.** Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (3-19-07)

**03. Rates.** The reimbursement rates calculated for waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the participant's home or other service delivery location when the participant is not being provided transportation. (3-19-07)

04. Reimbursement. For select services, the statewide reimbursement rate for DD waiver services was derived by using Bureau of Labor Statistics mean wage for the direct care staff providing the service, adjusted for employment-related expenditures, program-related costs, and general and administrative costs based on a cost survey as described in Subsection 706.05 of this rule. Reimbursement rates are set at a percentage of the statewide target reimbursement rate. (7-1-11)T

05. Cost Survey. The Department will conduct a cost survey every five (5) years from a statistically appropriate number of provider association representatives in order to obtain cost data for employment-related expenditures, program-related costs, and general and administrative costs. (7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**736. SERVICE COORDINATION: PROVIDER REIMBURSEMENT.**

**01. Duplication.** Participants are only eligible for one (1) type of service coordination. If they qualify for more than one (1) type, the participant must choose one (1). Service coordination payment must not duplicate payment made to public or private sector entities under other program authorities for this same purpose. (3-19-07)

**02. Payment for Service Coordination.** Subject to the service limitations in Subsection 736.06 of this rule, only the following services are reimbursable: (5-8-09)

**a.** Service coordination plan development defined in Section 721 of these rules. (5-8-09)

**b.** Face-to-face contact required in Subsection 728.07 of these rules. (5-8-09)

**c.** Two-way communication between the service coordinator and the participant, participant's service providers, family members, primary care givers, legal guardian, or other interested persons. (5-8-09)

**d.** Face-to-face contact between the service coordinator and the participant's family members, legal representative, primary caregivers, providers, or other interested persons. (3-19-07)

**e.** Referral and related activities associated with obtaining needed services as identified in the service coordination plan. (5-8-09)

**03. Service Coordination During Institutionalization.** Service coordination is reimbursable on the day a participant is admitted to a medical institution if the service is provided prior to admission. Service coordination is reimbursable on the day of discharge from a medical institution if the service is provided after discharge. (5-8-09)

**a.** Service coordination for reintegration into the community, can only be provided by and reimbursed to a service coordination agency when the following applies: (5-8-09)

**i.** During the last fourteen (14) days of an inpatient stay which is less than one hundred eighty (180) days in duration; or (5-8-09)

**ii.** During the last sixty (60) days of an inpatient stay of one hundred eighty (180) days or more. (5-8-09)

**b.** Service coordination providers may not file claims for reimbursement until the participant is discharged and using community services; (5-8-09)

**c.** Service coordination must not duplicate activities provided as part of admission or discharge planning activities of the medical institution. (5-8-09)

**04. Incarceration.** Service coordination is not reimbursable when the participant is incarcerated. (3-19-07)

**05. Services Delivered Prior to Assessment.** Payment for on-going service coordination will not be made prior to the completion of the service coordination plan. (5-8-09)

**06. Payment Limitations.** Reimbursement is not allowed for missed appointments, attempted contacts, travel to provide the service, leaving messages, scheduling appointments with the Medicaid service coordinator, transporting participants, or documenting services. (5-8-09)

**a.** Service coordination providers are paid in unit increments of fifteen (15) minutes each. A service coordinator can only be reimbursed for the amount of time worked and must not bill for more than 4 billing units per hour. The following table is an example of minutes to billing units. (5-8-09)

Services Provided Are More Than Minutes	Services Provided Are Less Than Minutes	Billing Units
8	23	1
22	38	2
37	53	3
52	68	4
67	83	5
82	98	6
97	113	7

(5-8-09)

**b.** Direct delivery of medical, educational, psychiatric, social, early intervention, or other service to which a participant has been referred is not reimbursable as service coordination. (5-8-09)

**c.** Activities that are an integral component of another covered Medicaid service are not reimbursable as service coordination. (5-8-09)

**d.** Activities that are integral to the administration of foster care programs are not reimbursable as service coordination. (5-8-09)

**e.** Activities that are integral to the administration of another non-medical program are not reimbursable as service coordination. This exclusion does not apply to case management provided as part of the individualized education program or individualized family service plan required by the Individuals with Disabilities Education Act. (5-8-09)

**07. Healthy Connections.** A participant enrolled in Healthy Connection must receive a referral for assessment and provision of services from his Healthy Connections provider, ~~unless he receives personal care services or aged and disabled waiver services.~~ To be reimbursed for service coordination, the Healthy Connections referral must cover the dates of service delivery. ~~(5-8-09)~~(7-1-11)T

**08. Group Service Coordination.** Payment is not allowed for service coordination provided to a group of participants. (3-19-07)

**09. Reimbursement.** The statewide reimbursement rate for a service coordinator and a paraprofessional was derived by using: (7-1-11)T

**a.** Bureau of Labor Statistics mean wage for the direct care staff providing the service adjusted for employment-related expenditures; (7-1-11)T

**b.** Non-productive time including vacation, sick time, and holiday; and (7-1-11)T

**c.** An indirect general and administrative cost based on a survey as described in Subsection 736.10 of this rule. (7-1-11)T

**10. Cost Survey.** The Department will conduct a time study, general and administrative cost, and mileage cost survey every five (5) years from a statistically appropriate number of provider association representatives in order to obtain time and cost data to provide services. (7-1-11)T

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1105**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code, and House Bill 260 (2011) codified in Sections 56-255, 56-257, and 56-260 through 56-266, Idaho Code, as amended.

**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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule changes are needed to continue cost saving measures begun during SFY 2011, as well as align the rules with House Bill 260 passed by the 2011 Legislature, and codified in Sections 56-255, 56-257, and 56-260 through 56-266, Idaho Code, as amended.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, in particular, House Bill 260 (2011).

**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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The estimated cost savings for these rule changes are as follows: \$6,593,000 to continue cost saving measures begun in SFY 2011; in addition, under HB 260: \$2,270,000 for reduction in adult psycho-social rehabilitation (PSR) hours, and \$2,000,000 through refinements to the developmental disabilities (DD) individual budget modification process, requirements and criteria in order to respond to requests for individual budget modifications only when health and safety issues are identified for adult developmental disabilities services.

The total estimated cost savings for SFY 2012 to the state general fund for these rule changes is \$10,863,000, and was included in the Department's appropriations for SFY 2012.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to bring this chapter of rules into compliance with House Bill 260 (2011).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Paul Leary at (208) 364-1836.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 13th day of July, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0310-1105**

**010. DEFINITIONS: A THROUGH D.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Accrual Basis.** An accounting system based on the principle that revenues are recorded when they are earned; expenses are recorded in the period incurred. (3-19-07)

**02. Active Treatment.** Active treatment is the continuous participation, during all waking hours, by an individual in an aggressive, consistently implemented program of specialized and generic training, treatment, health and related services, and provided in accordance with a treatment plan developed by an interdisciplinary team and monitored by a Qualified Intellectual Disabilities Professional (QIDP) directed toward: the acquisition of the behaviors necessary for the resident to function with as much self-determination and independence as possible; or the prevention or deceleration of regression or loss of current functional status. (3-19-07)

**03. Activities of Daily Living (ADL).** The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (3-19-07)

**04. Allowable Cost.** Costs that are reimbursable, and sufficiently documented to meet the requirements of audit. (3-19-07)

**05. Amortization.** The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (3-19-07)

**06. Appraisal.** The method of determining the value of property as determined by an American Institute of Real Estate Appraiser (MAI) appraisal. The appraisal must specifically identify the values of land, buildings, equipment, and goodwill. (3-19-07)

**07. Assets.** Economic resources of the provider recognized and measured in conformity with generally accepted accounting principles. (3-19-07)

**08. Attendant Care.** Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically-oriented tasks dealing with the functional needs of the participants and accommodating the participant's needs for long-term maintenance, supportive care, or instrumental activities of daily living (IADL). These services may include personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or the participant. Services are based on the person's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. (5-8-09)

- 09. Audit.** An examination of provider records on the basis of which an opinion is expressed representing the compliance of a provider's financial statements and records with Medicaid law, regulations, and rules. (3-19-07)
- 10. Auditor.** The individual or entity designated by the Department to conduct the audit of a provider's records. (3-19-07)
- 11. Audit Reports.** (3-19-07)
- a.** Draft Audit Report. A preliminary report of the audit finding sent to the provider for the provider's review and comments. (3-19-07)
- b.** Final Audit Report. A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. (3-19-07)
- c.** Interim Final Audit Report. A written report containing the results, findings, and recommendations, if any, from the audit of the provider, sent to the Department by the auditor. (3-19-07)
- 12. Bad Debts.** Amounts due to provider as a result of services rendered, but which are considered uncollectible. (3-19-07)
- 13. Bed-Weighted Median.** A numerical value determined by arraying the average per diem cost per bed of all facilities from high to low and identifying the bed at the point in the array at which half of the beds have equal or higher per diem costs and half have equal or lower per diem costs. The identified bed is the median bed. The per diem cost of the median bed is the bed-weighted median. (3-19-07)
- 14. Capitalize.** The practice of accumulating expenditures related to long-lived assets which will benefit later periods. (3-19-07)
- 15. Case Mix Adjustment Factor.** The factor used to adjust a provider's direct care rate component for the difference in the average Medicaid acuity and the average nursing facility-wide acuity. The average Medicaid acuity is from the picture date immediately preceding the rate period. The average nursing facility-wide acuity is the average of the indexes that correspond to the cost reporting period. (3-19-07)
- 16. Case Mix Index (CMI).** A numeric score assigned to each nursing facility resident, based on the resident's physical and mental condition, that projects the amount of relative resources needed to provide care to the resident. (3-19-07)
- a.** Nursing Facility Wide Case Mix Index. The average of the entire nursing facility's case mix indexes identified at each picture date during the cost reporting period. If case mix indexes are not available for applicable quarters due to lack of data, case mix indexes from available quarters will be used. (3-19-07)
- b.** Medicaid Case Mix Index. The average of the weighting factors assigned to each Medicaid resident in the facility on the picture date, based on their RUG classification. Medicaid or non-Medicaid status is based upon information contained in the MDS databases. To the extent that Medicaid identifiers are found to be incorrect, the Department may adjust the Medicaid case mix index and reestablish the reimbursement rate. (3-19-07)
- c.** State-Wide Average Case Mix Index. The simple average of all nursing facilities "facility wide" case mix indexes used in establishing the reimbursement limitation July 1st of each year. The state-wide case mix index will be calculated annually during each July 1st rate setting. (3-19-07)
- 17. Certified Family Home.** A home certified by the Department to provide care to one (1) or two (2) adults, who are unable to reside on their own and require help with activities of daily living, protection and security, and need encouragement toward independence. (3-19-07)
- 18. Chain Organization.** A proprietorship, partnership, or corporation that leases, manages, or owns

two (2) or more facilities that are separately licensed. (3-19-07)

**19. Claim.** An itemized bill for services rendered to one (1) participant by a provider and submitted to the Department for payment. (3-19-07)

**20. Clinical Nurse Specialist.** A licensed professional nurse who meets all the applicable requirements to practice as clinical nurse specialist under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-19-07)

~~**21. Collateral Contact.** Coordination of care communication that is initiated by a medical or qualified treatment professional with members of a participant's interdisciplinary team or consultant to the interdisciplinary team. The communication is limited to interpretation or explanation of results of psychiatric or other medical examinations and procedures or other accumulated data to family or responsible persons or advising them how to assist the participant. Collateral contact is used to: (5-8-09)~~

~~**a.** Coordinate care between professionals who are serving the participant; (5-8-09)~~

~~**b.** Relay medical results and explanations to members of the participant's interdisciplinary team; or (5-8-09)~~

~~**c.** Conduct an intermittent treatment plan review with the participant and his interdisciplinary team. (5-8-09)~~

**221. Common Ownership.** An individual, individuals, or other entities who have equity or ownership in two (2) or more organizations which conduct business transactions with each other. Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider. (3-19-07)

**232. Compensation.** The total of all remuneration received, including cash, expenses paid, salary advances, etc. (3-19-07)

**243. Control.** Control exists where an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. (3-19-07)

**254. Cost Center.** A "collection point" for expenses incurred in the rendering of services, supplies, or materials that are related or so considered for cost-accounting purposes. (3-19-07)

**265. Cost Component.** The portion of the nursing facility's rate that is determined from a prior cost report, including property rental rate. The cost component of a nursing facility's rate is established annually at July 1st of each year. (3-19-07)

**276. Cost Reimbursement System.** A method of fiscal administration of Title XIX and Title XXI which compensates the provider on the basis of expenses incurred. (3-19-07)

**287. Cost Report.** A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-19-07)

**298. Cost Statements.** An itemization of costs and revenues, presented on the accrual basis, which is used to determine cost of care for facility services for a specified period of time. These statements are commonly called income statements. (3-19-07)

**3029. Costs Related to Patient Care.** All necessary and proper costs which are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. Necessary and proper costs related to patient care are usually costs which are common and accepted occurrences in the field of the provider's activity. They include, but are not limited to, costs such as depreciation, interest expenses, nursing costs, maintenance costs, administrative costs, costs of employee pension plans, and normal standby costs. (3-19-07)



**340. Costs Not Related to Patient Care.** Costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are nonallowable in computing reimbursable costs. They include, for example, cost of meals sold to visitors or employees; cost of drugs sold to other than patients; cost of operation of a gift shop; and similar items. Travel and entertainment expenses are nonallowable unless it can be specifically shown that they relate to patient care and for the operation of the nursing facility. (3-19-07)

**321. Customary Charges.** Customary charges are the rates charged to Medicare participants and to patients liable for such charges, as reflected in the facility's records. Those charges are adjusted downward, when the provider does not impose such charges on most patients liable for payment on a charge basis or, when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt under PRM, Chapter 3, Sections 310 and 312. (3-19-07)

**332. Day Treatment Services.** Day treatment services are developmental services provided regularly during normal working hours on weekdays by, or on behalf of, the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID). However, day treatment services do not include recreational therapy, speech therapy, physical therapy, occupational therapy, or services paid for or required to be provided by a school or other entity. (3-19-07)

**343. Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (3-19-07)

**354. Depreciation.** The systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated life of the assets. (3-19-07)

**365. Developmental Disability (DD).** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age; and (3-19-07)

**a.** Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; (3-19-07)

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (3-19-07)

**c.** Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (3-19-07)

**376. Direct Care Costs.** Costs directly assigned to the nursing facility or allocated to the nursing facility through the Medicare cost finding principles and consisting of the following: (3-19-07)

**a.** Direct nursing salaries that include the salaries of professional nurses (RN), licensed professional nurses, certified nurse's aides, and unit clerks; (3-19-07)

**b.** Routine nursing supplies; (3-19-07)

**c.** Nursing administration; (3-19-07)

**d.** Direct portion of Medicaid related ancillary services; (3-19-07)

**e.** Social services; (3-19-07)

**f.** Raw food; (3-19-07)

- g.** Employee benefits associated with the direct salaries: and (3-19-07)
- h.** Medical waste disposal, for rates with effective dates beginning July 1, 2005. (3-19-07)
- 387.** **Director.** The Director of the Department of Health and Welfare or his designee. (3-19-07)
- 398.** **Durable Medical Equipment (DME).** Equipment other than prosthetics or orthotics which can withstand repeated use by one (1) or more individuals, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a Medicaid participant. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**013. DEFINITIONS P THROUGH Z.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

- 01. Patient Day.** For a nursing facility or an ICF/ID, a calendar day of care which will include the day of admission and exclude the day of discharge unless discharge occurs after 3:00 p.m. or it is the date of death, except that, when admission and discharge occur on the same day, one (1) day of care will be deemed to exist. (3-19-07)
- 02. Participant.** A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-19-07)
- 03. Patient.** The person undergoing treatment or receiving services from a provider. (3-19-07)
- 04. Personal Assistance Agency.** An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal assistants working for them, and is the employer of record as well as the actual employer. (5-8-09)
- 05. Personal Assistance Services (PAS).** Services that include both attendant care for participants under an HCBS waiver and personal care services for participants under the Medicaid State Plan. PAS means services that involve personal and medically-oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or instrumental activities of daily living (IADLs). These services may include personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or participant. Services are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. (5-8-09)
- 06. Physician.** A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a state or United States territory. (3-19-07)
- 07. Physician's Assistant.** A person who meets all the applicable requirements to practice as licensed physician assistant under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants." (3-19-07)
- 08. Picture Date.** A point in time when case mix indexes are calculated for every nursing facility based on the residents in the nursing facility on that day. The picture date to be used for rate setting will be the first day of the first month of a quarter. The picture date from that quarter will be used to establish the nursing facility's rate for the next quarter. (3-19-07)
- 09. Plan of Care.** A written description of medical, remedial, or rehabilitative services to be provided to a participant, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (3-19-07)

10. **Private Rate.** Rate most frequently charged to private patients for a service or item. (3-19-07)
11. **PRM.** The Provider Reimbursement Manual. (3-19-07)
12. **Property.** The homestead and all personal and real property in which the participant has a legal interest. (3-19-07)
13. **Property Costs.** Property costs are the total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The Department may require and utilize an appraisal to establish which components are an integral part of property costs. (3-19-07)
14. **Property Rental Rate.** A rate paid per Medicaid patient day to free-standing nursing facilities and ICF/IDs in lieu of reimbursement for property costs other than property taxes, property insurance, and the property costs of major movable equipment at ICF/ID facilities. (3-19-07)
15. **Provider.** Any individual, partnership, association, corporation or organization, public or private, that furnishes medical goods or services in compliance with these rules and who has applied for and received a Medicaid provider number and has entered into a written provider agreement with the Department in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205. (3-19-07)
16. **Provider Agreement.** An written agreement between the provider and the Department, in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205. (3-19-07)
17. **Provider Reimbursement Manual (PRM).** The Providers Reimbursement Manual, a federal publication which specifies accounting treatments and standards for the Medicare program, CMS Publications 15-1 and 15-2, which are incorporated by reference in Section 004 of these rules. (3-19-07)
18. **Psychologist, Licensed.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (3-19-07)
19. **Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners," and who is registered with the Bureau of Occupational Licenses. (3-19-07)
20. **Public Provider.** A public provider is one operated by a federal, state, county, city, or other local government agency or instrumentality. (3-19-07)
21. **Raw Food.** Food used to meet the nutritional needs of the residents of a facility, including liquid dietary supplements, liquid thickeners, and tube feeding solutions. (3-19-07)
22. **Reasonable Property Insurance.** Reasonable property insurance means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm's length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility's fiscal year cannot be considered reasonable. (3-19-07)
23. **Recreational Therapy (Services).** Those activities or services that are generally perceived as recreation such as, but not limited to, fishing, hunting, camping, attendance or participation in sporting events or practices, attendance at concerts, fairs or rodeos, skiing, sightseeing, boating, bowling, swimming, and special day parties (birthday, Christmas, etc.). (7-1-11)
24. **Regional Nurse Reviewer (RNR).** A registered nurse who reviews and makes determinations on applications for entitlement to and continued participation in Title XIX and Title XXI long term care for the Department. (3-19-07)

25. **Registered Nurse - R.N.** Which in the state of Idaho is known as a Licensed Professional Nurse and who meets all the applicable requirements to practice as a licensed professional nurse under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01 "Rules of the Idaho Board of Nursing." (3-19-07)
26. **Related Entity.** An organization with which the provider is associated or affiliated to a significant extent, or has control of, or is controlled by, that furnishes services, facilities, or supplies for the provider. (3-19-07)
27. **Related to Provider.** The provider, to a significant extent, is associated or affiliated with, or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies. (3-19-07)
28. **Residential Care or Assisted Living Facility.** A facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three (3) or more adults not related to the owner. In this chapter, Residential Care or Assisted Living Facilities are referred to as "facility." Distinct segments of a facility may be licensed separately, provided each segment functions independently and meets all applicable rules. (3-19-07)
29. **Resource Utilization Groups (RUG).** A process of grouping residents according to the clinical and functional status identified by the responses to key elements of the MDS. The RUG Grouper is used for the purposes of rate setting and determining nursing facility level of care. (4-2-08)
30. **Skilled Nursing Care.** The level of care for patients requiring twenty-four (24) hour skilled nursing services. (3-19-07)
31. **Social Security Act.** 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons meeting certain criteria. (3-19-07)
32. **State Plan.** The contract between the state and federal government under 42 U.S.C. section 1396a(a). (3-19-07)
33. **Supervision.** Procedural guidance by a qualified person and initial direction and periodic inspection of the actual act, at the site of service delivery. (3-19-07)
34. **Title XVIII.** Title XVIII of the Social Security Act, known as Medicare, for the aged, blind, and disabled administered by the federal government. (3-19-07)
35. **Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-19-07)
36. **Title XXI.** Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-19-07)
37. **Third Party.** Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a participant of medical assistance. (3-19-07)
38. **Transportation.** The physical movement of a participant to and from a medical appointment or service by the participant, another person, taxi or common carrier. (3-19-07)
39. **Uniform Assessment.** A set of standardized criteria to assess functional and cognitive abilities. (3-19-07)
40. **Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities as described in IDAPA 16.03.23 "Rules Governing Uniform Assessments of State-Funded Clients." (3-19-07)
41. **Updated Assessments.** Assessments are considered updated and current when a qualified professional with the same credential or the same qualifications of that professional who completed the assessment

has reviewed such assessment and verified by way of their signature and date in the participant's file that the assessment continues to reflect the participant's current status and assessed needs. (7-1-11)T

~~412.~~ **Utilities.** All expenses for heat, electricity, water and sewer. (3-19-07)

~~423.~~ **Utilization Control (UC).** A program of prepayment screening and annual review by at least one (1) Regional Nurse Reviewer to determine the appropriateness of medical entitlement and the need for continued medical entitlement of applicants or participants to Title XIX and Title XXI benefits in a nursing facility. (3-19-07)

~~434.~~ **Utilization Control Team (UCT).** A team of Regional Nurse Reviewers which conducts on-site reviews of the care and services in the nursing facilities approved by the Department as providers of care for eligible medical assistance participants. (3-19-07)

~~445.~~ **Vocational Services.** Services or programs which are directly related to the preparation of individuals for paid or unpaid employment. The test of the vocational nature of the service is whether the services are provided with the expectation that the participant would be able to participate in a sheltered workshop or in the general work force within one (1) year. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - DEFINITIONS.** (3-19-07)  
These definitions apply to Sections 100 through 146 of these rules.

**01. Agency.** A Medicaid provider who delivers either mental health clinic services or psychosocial rehabilitative services, or both. (5-8-09)

~~02. **Assessment Hours.** Time allotted for completion of intake, evaluation, and diagnostic services.~~ (5-8-09)

~~032.~~ **Community Reintegration.** A psychosocial rehabilitation (PSR) service that provides practical information and direct support to help the participant maintain his current skills, prevent regression, or practice newly-acquired life skills. The intention of this service is to provide the information and support needed by a participant to achieve the highest level of stability and independence that meets his ongoing recovery needs. (5-8-09)

~~043.~~ **Comprehensive Diagnostic Assessment.** A thorough assessment of the participant's current condition and complete medical and psychiatric history. (5-8-09)

~~04.~~ **Comprehensive Diagnostic Assessment Addendum.** A supplement to the comprehensive diagnostic assessment that contains updated information relevant to the formulation of a participant's diagnosis and disposition for treatment. (7-1-11)T

**05. Demographic Information.** Information that identifies participants and is entered into the Department's database collection system. (3-19-07)

**06. Duration of Services.** Refers to length of time for a specific service to occur in a single encounter. (5-8-09)

~~07. **Functional Assessment.** In rehabilitative mental health, this assessment is used to provide supplemental information to the comprehensive diagnostic assessment that provides information on the current or required capabilities needed by a participant to maintain himself in his chosen environment. It is a description and evaluation of the participant's practical ability to complete tasks that support activities of daily living, family life, life in the community, and promote independence. This assessment assists participants to better understand what skills they need to achieve their rehabilitation goals.~~ (5-8-09)

- ~~087.~~ **Goal.** The desired outcome related to an identified issue. (3-19-07)
- ~~098.~~ **Initial Contact.** The date a participant, or participant's parent or legal guardian comes in to an agency and requests Enhanced Plan services. (5-8-09)
- ~~10.~~ **Intake Assessment.** *An agency's initial assessment of the participant that is conducted by an agency staff person who has been trained to perform mental status examinations and solicit sensitive health information for the purpose of identifying service needs prior to developing an individualized treatment plan. The intake assessment must contain a description of the reason(s) the participant is seeking services and a description of the participant's current symptoms, present life circumstances across all environments, recent events, resources, and barriers to mental health treatment. If this is the initial screening process then it must be used to document the indicators that mental health services are a medical necessity for the participant.* (5-8-09)
- ~~H09.~~ **Interdisciplinary Team.** Group that consists of two (2) or more individuals in addition to the participant, the participant's legal guardian, and the participant's natural supports. This may include professionals from several fields or professions. Team members combine their skills and resources to provide guidance and assistance in the creation of the participants treatment plan. Professionals working with the participant to fulfill the goals and objectives on the treatment plan are members of the participant's interdisciplinary team whether they attend treatment plan meetings or not. At a minimum, professional members of the team include the medical professional authorizing the treatment plan and the specific agency staff member who is working with the participant. (5-8-09)
- ~~120.~~ **Issue.** A statement specifically describing the participant's behavior directly relating to the participant's mental illness and functional impairment. (3-19-07)
- ~~131.~~ **Level of Care.** Clinical treatment decisions that determine service site, modality, urgency, and specific interventions needed to address the key presenting signs, symptoms, and environmental factors that indicate the severity of illness and the intensity of service needed by the participant. It also takes into account relevant external factors affecting clinical treatment decisions. (5-8-09)
- ~~142.~~ **Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. The nurse practitioner and clinical nurse specialist must have experience prescribing medications for psychiatric disorders. (5-8-09)
- ~~153.~~ **Neuropsychological Testing.** Assessment of brain functioning through structured and systematic behavioral observation. Neuropsychological tests are designed to examine a variety of cognitive abilities, including speed of information processing, attention, memory, language, and executive functions, which are necessary for goal-directed behavior. These data can provide information leading to the diagnosis of a cognitive deficit or to the confirmation of a diagnosis, as well as to the localization of organic abnormalities in the central nervous system. The data can also guide effective treatment methods for the rehabilitation of impaired participants. (5-8-09)
- ~~14.~~ **New Participant.** A participant is considered "new" if he has not received Medicaid-reimbursable mental health clinic or psychosocial rehabilitation services (PSR) in the twelve (12) months prior to the current treatment episode. (7-1-11)T
- ~~165.~~ **Objective.** A milestone toward meeting the goal that is concrete, measurable, time-limited, and behaviorally specific. (3-19-07)
- ~~176.~~ **Occupational Therapy.** For the purposes of mental health treatment, the use of purposeful, goal-oriented activity to achieve optimum functional performance and independence, prevent further disability, and maintain health with individuals who are limited by the symptoms of their mental illness. (5-8-09)
- ~~187.~~ **Partial Care.** Partial care is treatment for ~~those children with serious emotional disturbance and adults~~ participants with ~~severe~~ serious and persistent mental illness (SPMI) whose functioning is sufficiently disrupted ~~so as~~ to the extent that it interferes with their productive involvement in daily living. Partial care services are a structured program of therapeutic interventions that assist program participants in the stabilization of their behavior and conduct through the application of principles of behavior modification for behavior change and structured, goal-oriented group socialization for skill acquisition. (3-19-07)(7-1-11)T

**198. Pharmacological Management.** The in-depth management of medications for psychiatric disorders for relief of a participant's signs and symptoms of mental illness, provided by a licensed practitioner of the healing arts. (5-8-09)

**2019. Psychiatric Nurse, Licensed Master's Level.** A certified psychiatric nurse, Clinical Nurse Specialist or Psychiatric Nurse Practitioner, must be licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. (5-8-09)

**210. Psychosocial Rehabilitative Services (PSR).** An array of rehabilitative services that emphasize resiliency for children with serious emotional disturbance (SED) and recovery for adults with serious and persistent mental illness (SPMI). Services target skills for children that they would have appropriately developed for their developmental stage had they not developed symptoms of SED. Services target skills for adults that have been lost due to the symptoms of their mental illness. (5-8-09)

**221. Psychotherapy.** A method of treating and managing psychiatric disorders through the use of evidenced-based psychological treatment modalities that match the participant's ability to benefit from the service. The focus of the service is on behavioral, emotional, and cognitive aspects of a participant's functioning. (5-8-09)

**232. Psychological Testing.** Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of an examinee's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses or functional impairments. (5-8-09)

**243. Restraints.** Restraints include the use of physical, mechanical, or chemical interventions, or other means to temporarily subdue or modify participant behavior. (5-8-09)

- a.** A restraint includes; (5-8-09)
  - i.** Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a participant to move his arms, legs, body, or head freely; or (5-8-09)
  - ii.** A drug or medication when it is used as a restriction to manage the participant's behavior or restrict the participant's freedom of movement and is not a standard treatment or dosage for the participant's condition; (5-8-09)
- b.** A restraint does not include physical escorts or devices, such as orthopedically prescribed devices, to permit the participant to participate in activities without the risk of physical harm. (5-8-09)

**254. Seclusion.** Seclusion is the involuntary confinement of a participant alone in a room or area from which the participant is prevented from leaving. (5-8-09)

**265. Serious Emotional Disturbance (SED).** In accordance with the Children's Mental Health Services Act, Section 16-2403, Idaho Code, SED is: (5-8-09)

- a.** An emotional or behavioral disorder, according to the DSM-IV-TR which results in a serious disability; and (5-8-09)
- b.** Requires sustained treatment interventions; and (5-8-09)
- c.** Causes the child's functioning to be impaired in thought, perception, affect, or behavior. (5-8-09)
- d.** A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (5-8-09)

**276.** **Serious Mental Illness (SMI).** In accordance with 42 CFR 483.102(b)(1), a person with SMI: (5-8-09)

**a.** Currently or at any time during the year, must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-IV-TR; and (5-8-09)

**b.** Must have a functional impairment which substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. Instrumental living skills include maintaining a household, managing money, getting around the community, and taking prescribed medication. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. (5-8-09)

**287.** **Serious and Persistent Mental Illness (SPMI).** Participants must meet the criteria for SMI, have at least one (1) additional functional impairment, and have a diagnosis under DSM-IV-TR with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. (5-8-09)

**298.** **Skill Training.** The service of providing a curriculum-based method of skill building in a custom-tailored approach that meets the needs identified on the person's assessment, focuses on interventions that are necessary to maintain functioning, prevent regression, or achieve a rehabilitation goal, and promotes increased independence in thinking and behavior. Skill training may be delivered individually or in groups. (5-8-09)

**3029.** **Tasks.** Specific, time-limited activities and interventions designed to accomplish the objectives in the individualized treatment plan. (3-19-07)

**340.** **Treatment Plan Review.** The practice of obtaining input from members of a participant's interdisciplinary team that is focused on evaluating the programs, progress, and future plans of a participant. This review should provide feedback and suggestions intended to help team members and the participant to accomplish the participant's goals identified on the participant's individualized treatment plan. (5-8-09)

**321.** **USPRA.** The United States Psychiatric Rehabilitation Association is an association that works to improve and promote the practice and outcomes of psychiatric rehabilitation and recovery. USPRA also maintains a certification program to promote the use of qualified staff to work for individuals with mental illness. <http://www.uspra.org> (5-8-09)

## **112. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - PARTICIPANT ELIGIBILITY.**

To qualify for enhanced outpatient mental health services, a participant must obtain a comprehensive diagnostic assessment as described in Section 114 of these rules. The comprehensive diagnostic assessment for enhanced outpatient mental health services must include documentation of the medical necessity for each service to be provided. For partial care services, the comprehensive diagnostic assessment must also contain documentation that shows the participant is currently at risk for an out-of-home placement, further clinical deterioration that would lead to an out-of-home placement, or further clinical deterioration that would interfere with the participant's ability to maintain his current level of functioning. ~~For PSR, the participant must also obtain a functional assessment that describes the need for skill training.~~ Participants who receive skill training can only receive training from one (1) type of service, depending on their eligibility. (5-8-09)(7-1-11)T

**01. General Participant Eligibility Criteria.** The medical record must have documented evidence of a history and physical examination that has been completed by a participant's primary care physician. This examination must be within the last twelve (12) months immediately preceding the initiation of mental health clinic services and annually thereafter. Providers must refer those participants who have not had a history and physical examination to their primary care provider for this service. Participants who are in crisis as described at Subsection 123.04 of this rule may receive mental health services prior to obtaining a history and physical examination. In order for a participant to be eligible for enhanced outpatient mental health services, the following criteria must be met and



documented in the comprehensive diagnostic assessment: (5-8-09)

**a.** The service represents the least restrictive setting and other services have failed or are not appropriate for the clinical needs of the participant. (5-8-09)

**b.** The services can reasonably be expected to improve the participant's condition or prevent further regression so that the current level of care is no longer necessary or may be reduced. (4-2-08)

**c.** Participants identified in Subsections 112.01.c.i. through 112.01.c.iii. of this rule cannot participate in enhanced outpatient mental health services: (4-2-08)

i. Participants at immediate risk of self-harm or harm to others who cannot be stabilized; (4-2-08)

ii. Participants needing more restrictive care or inpatient care; and (4-2-08)

iii. Participants who have not fulfilled the requirements of Subsections 112.02 or 112.03 of these rules. (4-2-08)

**02. Eligibility Criteria for Children.** To be eligible for services, a participant under the age of eighteen (18) must have a serious emotional disturbance (SED). (5-8-09)

**03. Eligibility Criteria for Adults.** To be eligible for services, a participant must be eighteen (18) years or older and have a serious mental illness (SMI). (5-8-09)

**04. Level of Care Criteria - Mental Health Clinics.** To be eligible for mental health clinic services, a participant must meet the criteria as described in Subsections 112.04.a. and 112.04.b. of this rule. (4-2-08)

**a.** Children must meet Subsections 112.01 and 112.02 of this rule. (4-2-08)

**b.** Adults must meet Subsections 112.01 and 112.03 of this rule. (4-2-08)

**05. Level of Care Criteria - Psychosocial Rehabilitation (PSR) Services ~~and Partial Care Services~~ for Children.** To be eligible for ~~partial care services or~~ the PSR services of skill training and community reintegration, a child must meet the criteria of SED and Subsections 112.01 and 112.02 of this rule and must experience a substantial impairment in functioning. A child's level and type of functional impairment must be ~~described~~ documented in the ~~functional assessment~~ medical record. The Child and Adolescent Functional Assessment Scale/Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS) instrument must be used to obtain the child's initial functional impairment score. Subsequent scores must be obtained at regular intervals in order to determine the child's change in functioning that occurs as a result of mental health treatment. Items endorsed on the CAFAS/PECFAS must be supported by specific descriptions of the child's observable behavior in the comprehensive diagnostic assessment. Substantial impairment requires that the child score in the moderate range in at least two (2) subscales on the CAFAS/PECFAS. One (1) of the two (2) subscales must be from the following list: (5-8-09)(7-1-11)T

**a.** Self-harmful behavior; (4-2-08)

**b.** Moods/Emotions; or (4-2-08)

**c.** Thinking. (4-2-08)

**06. Level of Care Criteria - Psychosocial Rehabilitation (PSR) Services and Partial Care Services for Adults.** To be eligible for partial care services or the PSR services of skill training and community reintegration, an adult must meet the criteria of SPMI and Subsection 112.01 of this rule. In addition, the psychiatric disorder must be of sufficient severity to affect the participant's functional skills negatively, causing a substantial disturbance in role performance or coping skills in at least two (2) of the areas in Subsection 112.06.a. through 112.06.h. of this rule on either a continuous or an intermittent, at least once per year, basis. The skill areas that are targeted must be consistent with the participant's ability to engage and benefit from treatment. The detail of the adult's level and type of

functional impairment must be ~~described~~ **documented** in the ~~functional assessment~~ **medical record**:~~(5-8-09)~~**(7-1-11)T**

- a. Vocational/educational; (4-2-08)
- b. Financial; (4-2-08)
- c. Social relationships/support; (4-2-08)
- d. Family; (4-2-08)
- e. Basic living skills; (4-2-08)
- f. Housing; (4-2-08)
- g. Community/legal; or (4-2-08)
- h. Health/medical. (4-2-08)

**07. Criteria Following Discharge For Psychiatric Hospitalization.** Children and adults discharged from psychiatric hospitalization and who meet the diagnostic criteria of the target population in these rules are eligible for enhanced outpatient mental health clinic and PSR services. (3-19-07)

a. Children and adults discharged from psychiatric hospitalization and who meet the diagnostic criteria of the target population in these rules, described in Subsection 112.02 of this rule for children, and in Subsection 112.03 of this rule for adults, are considered immediately eligible for enhanced outpatient mental health services for a period of at least one hundred and twenty (120) days following discharge from the hospital. The individualized treatment plan must be completed and documented in the medical record within ten (10) days of discharge. (5-8-09)

i. Up to two (2) hours of plan development hours may be used for coordinating with hospital staff and others the participant chooses. These plan development hours are to be used for the development of an individualized treatment plan based on the participant's hospital records and past history. The provider agency does not have to perform any additional assessment in order to initiate treatment nor does the participant need to qualify as described in Section 114 of these rules. (5-8-09)

ii. Upon initiation of treatment at the agency, the treatment plan is valid for no more than one hundred twenty (120) days from the date of discharge from the hospital. **An intake comprehensive diagnostic assessment or updated comprehensive diagnostic assessment addendum** must be completed within ten (10) days of the initiation of treatment. ~~A comprehensive diagnostic assessment must be completed in lieu of the intake assessment~~ if one is not available from the hospital or if the one from the hospital does not contain the needed clinical information. ~~(5-8-09)~~**(7-1-11)T**

b. In order for the participant to continue in the services listed on the post-hospitalization treatment plan beyond one hundred twenty (120) days, **the plan must be updated and** the provider must establish that the participant meets the criteria as described in Subsections 112.01 through 112.06 of this rule as applicable to the services being provided, and that enhanced outpatient mental health services are appropriate for the participant's age, circumstances, and medically necessary level of care. The PSR or mental health clinic provider does not need to submit form H0002 because the participant is already in the Enhanced Plan. ~~(5-8-09)~~**(7-1-11)T**

**~~113. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES INTAKE ASSESSMENT (RESERVED)~~**

~~Intake assessments may be performed by PSR agencies and Mental Health Clinics for participants who transfer to them from other agencies. Intake assessments must meet requirements listed at IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Subsection 709.03. Intake assessments must not be performed as an initial evaluation service in PSR agencies when the PSR agency is performing a comprehensive diagnostic assessment.~~ (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

115. ~~ENHANCED OUTPATIENT MENTAL HEALTH SERVICES — FUNCTIONAL ASSESSMENT.~~  
**(RESERVED)**

~~For participants seeking the PSR services of skill training and community reintegration, a functional assessment must be completed by staff who meet the requirements under Section 131 of these rules. Staff performing the CAFAS/PECFAS must be the same staff completing the functional assessment. The functional assessment must incorporate the CAFAS/PECFAS findings. A functional assessment must evaluate the participant's use of critical skills that are needed for adaptive functioning in the various environments in which he lives. The number of skill areas that are targeted must be consistent with the participant's ability to engage and benefit from treatment. The functional assessment should include recommendations for training in skill areas from the following list in which the participant is interested in improving his skills.~~ (5-8-09)

~~01. **Health or Medical Issues.** Focus must be on participant's skills for self-managing health and medical issues including ability to schedule and keep medical appointments, maximize opportunities for communicating health status to medical providers, and adherence to medical regimens prescribed by healthcare providers.~~ (5-8-09)

~~02. **Vocational And Educational Status.** Focus must be on skill development to maximize adaptive occupational functioning as applicable to work or school settings.~~ (5-8-09)

~~03. **Financial Status.** Focus must be on the participant's skills for managing personal finances.~~ (5-8-09)

~~04. **Social Relationships and Supports.** Focus must be on participant's skills for establishing and maintaining personal support systems or relationships and participant's skills for developing and participating in leisure, recreational, or social interests.~~ (5-8-09)

~~05. **Family Status.** Focus must be on participant's skills needed to carry out family roles and participate in family relationships.~~ (5-8-09)

~~06. **Basic Living Skills.** Focus must be on participant's skills needed to perform age appropriate basic living skills, including transition to adulthood.~~ (5-8-09)

~~07. **Housing.** Focus must be on participant's skills for obtaining and maintaining safe and appropriate housing.~~ (5-8-09)

~~08. **Community and Legal Status.** Focus must be on participant's skills necessary for community living including compliance with rules, laws, and informal agreements made with others.~~ (5-8-09)

116. **ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - WRITTEN INDIVIDUALIZED TREATMENT PLAN.**

A written individualized treatment plan must be developed and implemented for each participant of enhanced outpatient mental health services as a means to address the enhanced service needs of the participant. Each individualized treatment plan must specify the individual staff person responsible for providing each service, and the amount, frequency and expected duration of treatment. The development of the initial Treatment planning is reimbursable if conducted by a professional identified in Subsections 131.01 through 131.03 of these rules. When the assessment indicates that the participant would benefit from psychotherapy or additional diagnostic services, the treatment plan must be completed by a qualified professional listed under IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Subsection 715.03. (5-8-09)(7-1-11)T

01. **Goals.** Services identified on the treatment plan must support the goals *of any of the following* that are applicable to the participant's identified needs. For adults, their treatment plan must incorporate the need for psychiatric services identified by the comprehensive diagnostic assessment. For children, their treatment plan must incorporate the substantial impairment areas identified by the CAFAS. Participant's goals may include any of the following: (5-8-09)(7-1-11)T

**a.** Skill Training. The goal is to assist the participant in regaining skills that have been lost due to the symptoms of his mental illness or that would have been otherwise developed except for the interference of his mental health condition. Through skill training, the participant should achieve maximum reduction of symptoms of mental illness or serious emotional disturbance that will allow for the greatest adjustment to living in the community. (5-8-09)

**b.** Community Reintegration. The goal is to provide practical information and support for the participant to be able to be effectively involved in the rehabilitation process. (5-8-09)

**c.** Partial care. The goal is to decrease the severity and acuity of presenting symptoms so that the participant may be maintained in the least restrictive setting and to increase the participant's interpersonal skills in order to obtain the optimal level of interpersonal adjustment. (3-19-07)

**d.** Psychotherapy. The goal is to engage in active treatment that involves psychological strategies for problem resolution to promote optimal functioning and a condition of improved mental health. (5-8-09)

**e.** Pharmacological Management. The goal is to obtain a decrease or remission of symptoms of psychiatric illness and improve quality of life through the use of pharmacological agents without causing adverse effects. (5-8-09)

**02. Plan Content.** An individualized treatment plan must meet the requirements listed in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 710. Additionally, at least one (1) objective is required in the areas that are most likely to lead to the greatest level of stabilization. (5-8-09)

**03. Plan Timeframes.** An individualized treatment plan must be developed and signed by a licensed physician or other licensed practitioner of the healing arts within thirty (30) calendar days from initial contact. Intermittent treatment plan reviews must occur as needed to incorporate progress, different goals, or change in treatment focus, but must not exceed one hundred twenty (120) days between reviews. An ~~new~~ updated treatment plan must be developed for participants who will continue in treatment beyond twelve (12) months.

~~(5-8-09)~~(7-1-11)T

**04. Choice of Providers.** The participant or his parent or legal guardian must be allowed to choose whether or not he desires to receive enhanced outpatient mental health services and which provider agency or agencies he would like to assist him in accomplishing the objectives stated in his individualized treatment plan. Documentation must be included in the participant's medical record showing that the participant or his parent or legal guardian has been informed of his rights to refuse services and choose provider agencies. (5-8-09)

**05. No Duplication of Services.** The provider agency or its designee must monitor, coordinate, and jointly plan with all known providers to a participant to prevent duplication of services provided to enhanced outpatient mental health services participants through other Medicaid reimbursable and non-Medicaid programs. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**118. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES: DESCRIPTIONS.**

**01. Psychotherapy.** Under the Medicaid Enhanced Plan, individual, family and group psychotherapy services are limited to forty-five (45) hours per calendar year. (3-19-07)

**02. Partial Care Services.** Under the Medicaid Enhanced Plan, partial care services are limited to twelve (12) hours per week per eligible participant. (5-8-09)

**a.** In order to be considered a partial care service, the service must: (3-19-07)

- i. Be provided in a structured environment within the MHC setting; (3-19-07)
  - ii. Be identified as a service need through the participant's comprehensive diagnostic assessment and ~~the functional assessment and~~ be indicated on the individualized treatment plan with documented, concrete, and measurable objectives and outcomes; and ~~(5-8-09)~~(7-1-11)T
  - iii. Provide interventions for relieving symptoms, stabilizing behavior, and acquiring specific skills. These interventions must include the specific medical services, therapies, and activities that are used to meet the treatment objectives. (5-8-09)
- b.** Staff Qualifications for Partial Care Services. Licensed, qualified professionals providing partial care services must have, at a minimum, one (1) or more of the qualifications listed in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Subsection 715.01. (3-19-07)
- c.** Excluded Services. Services that focus on vocation, recreation, or education are not reimbursable under Medicaid Partial Care. Services that are provided outside the clinic facility are not reimbursable. Participants who receive skill training in Partial Care can not receive skill training in psychosocial rehabilitation, developmental therapy, intensive behavioral intervention, or residential habilitation services. ~~(3-19-07)~~(7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**124. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR): COVERAGE AND LIMITATIONS.**

The following service limitations apply to PSR agency services, unless otherwise authorized by the Department.

(5-8-09)

**01. Assessment.** Assessment services must not exceed ~~six~~ four (64) hours per participant annually. The following assessments are included in this limitation: ~~(5-8-09)~~(7-1-11)T

~~a. Intake Assessment;~~ (5-8-09)

~~b.~~ **ba.** Comprehensive Diagnostic Assessment. This assessment, or an addendum to the existing assessment must be completed for each participant at least once annually; ~~(5-8-09)~~(7-1-11)T

~~c. Functional Assessment.~~ (5-8-09)

~~d. Psychological and Neuropsychological Assessments. The duration of this type of assessment is determined by the participant's benefits and the presenting reason for such an assessment.~~ (5-8-09)

~~e.~~ **eb.** Occupational Therapy Assessment. The duration of this type of assessment is determined by the participant's benefits and the presenting reason for such an assessment. (5-8-09)

**02. Psychological and Neuropsychological Testing.** Testing services are limited to two (2) computer-administered testing sessions and four (4) assessment hours per year. Additional testing must be prior authorized by the Department. Testing services are not included in the annual assessment limitation described at Subsection 124.01. The duration of psychological and neuropsychological testing is determined by the participant's benefits and the presenting reason for such an assessment. (7-1-11)T

**023. Individualized Treatment Plan.** Two (2) hours ~~per year per participant per provider agency are available for treatment plan development~~ are available for the development of the participant's initial treatment plan. Following the development of the initial treatment plan, all subsequent treatment must be based on timely updates to the initial plan. Treatment plan updates are considered part of the content of care and should occur as an integral part of the participant's treatment experience. ~~(3-19-07)~~(7-1-11)T

**034.** **Psychotherapy.** Individual, family and group psychotherapy services are limited to a maximum of twenty-four (24) hours annually. Services beyond six (6) hours weekly must be prior-authorized. (5-8-09)

**045.** **Crisis Intervention Service.** A maximum of ten (10) hours of crisis support in a community may be authorized per crisis per seven (7) day period. Authorization must follow procedure described above at Subsection 123.04 of these rules. This limitation is in addition to any other PSR service hours within that same time frame. (5-8-09)

**056.** **Skill Training and Community Reintegration.** Services are limited to five (5) hours weekly in any combination of individual or group skill training and community reintegration for eligible participants up to twenty-one (21) years of age. For participants aged twenty-one (21) years of age or older, services are limited to four (4) hours weekly in any combination of individual or group skill training and community reintegration. Up to five (5) additional weekly hours are available with prior authorization. Participants who receive skill training in psychosocial rehabilitation can not receive skill training in partial care, developmental therapy, intensive behavioral intervention, or residential habilitation services. ~~(5-8-09)~~(7-1-11)T

**067.** **Pharmacological Management.** Pharmacological management services beyond twenty-four (24) encounters per calendar year must be prior authorized by the Department. (5-8-09)

~~**07.** **Collateral Contact.** Collateral contact services beyond six (6) hours per calendar year must be prior authorized by the Department. (5-8-09)~~

**08.** **Occupational Therapy.** Occupational therapy services must be prior authorized by the Department, based on the results of an occupational therapy evaluation completed by an Occupational Therapist licensed in accordance with IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants." (5-8-09)

**09.** **Place of Service.** PSR agency services are to be home and community-based. (5-8-09)

**a.** PSR agency services must be provided to the participant in his home and community whenever possible. Any other location, including a provider's office or clinic, may be used if the specific place of service is stated in the individualized treatment plan and is necessary to maximize the impact of the service. (5-8-09)

**b.** PSR agency services may be provided to a participant living in a residential or assisted living facility if the PSR services are determined by the Department to be appropriate, desired by the resident, and are not the responsibility of the facility or another agency under the Negotiated Service Agreement for residential or assisted living facilities. (5-8-09)

**125. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR): EXCLUDED SERVICES NOT REIMBURSABLE UNDER MEDICAID.**

Excluded services are those services that are not reimbursable under Medicaid PSR. The following is a list of those services: (3-19-07)

**01.** **Inpatient.** Treatment services rendered to participants residing in inpatient medical facilities including nursing homes, or hospitals, except those identified in Subsection 140.09~~7~~ of these rules. ~~(3-19-07)~~(7-1-11)T

**02.** **Recreational and Social Activities.** Activities which are primarily social or recreational in purpose. (3-19-07)

**03.** **Employment.** Job-specific interventions, job training and job placement services which includes helping the participant develop a resume, applying for a job, and job training or coaching. (3-19-07)

**04.** **Household Tasks.** Staff performance of household tasks and chores. (3-19-07)

**05.** **Treatment of Other Individuals.** Treatment services for persons other than the identified participant. (3-19-07)

06. **Services Primarily Available Through Service Coordination Agencies.** Any service that is typically addressed by Service Coordination as described in Section 727 of these rules, is not included in the program of psychosocial rehabilitation services. The PSR agency staff should refer participants to service coordination agencies for these services. (5-8-09)

07. **Medication Drops.** Delivery of medication only; (3-19-07)

08. **Services Delivered on an Expired Individualized Treatment Plan.** Services provided between the expiration date of one (1) plan and the start date of the subsequent treatment plan. (3-19-07)

09. **Transportation.** The provision of transportation services and staff time to transport. (3-19-07)

10. **Inmate of a Public Institution.** Treatment services rendered to participants who are residing in a public institution as defined in 42 CFR 435.1009. (3-19-07)

11. **Services Not Listed.** Any other services not listed in Section 123 of these rules. (3-19-07)

126. -- 127. (RESERVED)

**128. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR): RESPONSIBILITIES OF THE DEPARTMENT.**

The Department will administer the provider agreement for the provision of PSR agency services and is responsible for the following tasks: (5-8-09)

01. **Credentialing.** The Department is responsible for ensuring Medicaid PSR agencies meet credentialing requirements described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 712. (3-19-07)

02. **Prior Authorization Process.** Reimbursement for specific services that require prior authorization will be authorized from the date the required documentation is received by the Department. The Department will complete the prior authorization process within ten (10) working days from the date all the required information is received from the provider. The specific documentation that is required for prior authorization is dependent on the request for additional services. (5-8-09)

~~a. **Hours and Type of Service.** The Department must authorize the number of hours and type of services, as specifically required in these rules, which could be reasonably expected to lead to achievement of the individualized treatment plan objectives address the participant's needs in relation to those services.~~ (5-8-09)(7-1-11)T

~~b. **Authorization Time Period.** Prior authorizations are limited to no more than a twelve (12) month period and must be reviewed and updated to continue.~~ (5-8-09)

03. **Notice of Decision.** At the point the Department makes a decision that a participant is ineligible for ~~PSR agency~~ **specific** services, a notice of decision citing the reason(s) the participant is ineligible for ~~PSR agency~~ **those** services must be issued by the Department. The notice of decision must be sent to the adult participant and a copy to his legal guardian, if any. When the participant is a minor child, the notice of decision must be sent to the minor child's parent or legal guardian. (5-8-09)(7-1-11)T

04. ~~**Increases in Individualized Treatment Plan Hours or Change in Service Type**~~ **Responding to Requests for Services.** When the Department is notified, in writing, by the provider of ~~recommended increases in hours or change in type of services~~ **provided** that requires prior authorization, the Department must review the request and either approve or deny the request within ten (10) working days of receipt. ~~A clear rationale for the increase in hours or change in service type must be included with the request.~~ (5-8-09)(7-1-11)T

~~05. **Changes to Individualized Treatment Plan Objectives or Tasks.** When a provider believes that an individualized treatment plan needs to be revised without increasing hours or changing type of service, the provider should amend the individualized treatment plan at the time of the next treatment plan review or when substantial~~

~~changes in the participant's mental status or circumstances require immediate changes in the plan objectives. The amended individualized treatment plan must be retained in the participant's record and submitted to the Department upon request.~~ (5-8-09)

**065. Service System.** The Department is responsible for the development, maintenance and coordination of regional, comprehensive and integrated service systems. (3-19-07)

**129. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR): PROVIDER RESPONSIBILITIES.**

**01. Provider Agreement.** Each provider must enter into a provider agreement with the Division of Medicaid for the provision of PSR agency services and also is responsible for the following tasks: (5-8-09)

~~**02. Service Provision.** Each provider must have signed additional terms to the general provider agreement with the Department.~~ (3-19-07)

~~**032. Service Availability.** Each provider must assure provision of PSR agency services to participants on a twenty-four (24) hour basis.~~ (5-8-09)

~~**043. Comprehensive Diagnostic Assessment and Individualized Treatment Plan Development.** The provider agency is responsible to conduct a comprehensive diagnostic assessment and develop an individualized treatment plan for each new participant with input from the interdisciplinary team if these services have not already been completed by another provider. In the event the agency makes a determination that it cannot serve the participant, the agency must make appropriate referrals to other agencies to meet the participant's identified needs.~~ (5-8-09)(7-1-11)T

~~**054. Individualized Treatment Plan.** The provider must develop an individualized treatment plan when one (1) has not already been developed in accordance with Section 116 of these rules. Providers must update the participant's treatment plan at least every one hundred twenty (120) days, or more frequently as necessary, until the participant is discharged from services. The signature of a licensed physician, or other licensed practitioner of the healing arts within the scope of his practice under state law is required on the individualized treatment plan indicating the services are medically necessary at least annually. The date of the initial plan is the date it is signed by the physician.~~ (5-8-09)(7-1-11)T

~~**065. Changes to Individualized Treatment Plan Objectives.** When a provider believes that an individualized treatment plan needs to be revised, the provider should make those revisions in collaboration with the participant's interdisciplinary team and obtain required signatures. Amendments and modifications to the treatment plan objectives must be justified and documented in the medical record.~~ (5-8-09)

~~**076. Effectiveness of Services.** Effectiveness of services, as measured by a participant's achievement of his plan objectives, must be monitored by the provider and changes to the individualized treatment plan must be initiated when service needs change or interventions are shown to be ineffective. These measures must be included on the participant's next treatment plan review.~~ (5-8-09)

~~**087. Healthy Connections Referral.** Providers must obtain a Healthy Connections referral if the participant is enrolled in the Healthy Connections program.~~ (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**136. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR): RECORD REQUIREMENTS FOR PROVIDERS.**

In addition to the development and maintenance of the individualized treatment plan, the following documentation must be maintained by the provider of PSR services: (3-19-07)

**01. Name.** Name of participant. (3-19-07)



- 02. Provider.** Name of the provider agency and the agency staff person delivering the service. (3-19-07)
- 03. Date, Time, Duration of Service, and Justification.** Documentation of the date, time, and duration of service, and the justification for the length of time which is billed must be included in the record. (3-19-07)
- 04. Documentation of Progress.** The written description of the service provided, the place of service, and the response of the participant must be included in the progress note. A separate progress note is required for each contact with a participant. (3-19-07)
- 05. Treatment Plan Review.** A documented outcome-specific review of progress toward each individualized treatment plan goal and objective must be kept in the participant's file. These reviews should occur intermittently, but not more than one hundred twenty (120) days apart on a continual basis until the participant is discharged. ~~(5-8-09)~~(7-1-11)T
- a.** A copy of the review must be sent to the Department upon request. Failure to do so may ~~result in the loss of a prior authorization or~~ result in a recoupment of reimbursement provided for services delivered after the intermittent staffing review date. ~~(5-8-09)~~(7-1-11)T
- b.** The review must also include a reassessment of the participant's continued need for services. The review must occur at least every one hundred twenty (120) days and be conducted in visual contact with the participant. For children, the review must include a new CAFAS/PECFAS for the purpose of measuring changes in the participant's functional impairment. (5-8-09)
- c.** After eligibility has been determined, subsequent CAFAS/PECFAS scores are used to measure progress and functional impairment and should not be used to terminate services. (3-19-07)
- 06. Signature of Staff Delivering Service.** The legible, dated signature, with degree credentials listed, of the staff person delivering the service. (3-19-07)
- 07. Choice of Provider.** Documentation of the participant's choice of provider must be maintained in the participant's file prior to the implementation of the individualized treatment plan. (3-19-07)
- 08. Closure of Services.** A discharge summary must be included in the participant's record and submitted to the Department identifying the date of closure, reason for ending services, progress on objectives, and referrals to supports and other services. (3-19-07)
- 09. Payment Limitations.** Reimbursement is not allowed for missed appointments, attempted contacts, travel to provide the service, leaving messages, scheduling appointments for any purpose, transporting participants, or documenting services. For services paid at the fifteen (15) minute incremental rate, providers must comply with Medicaid billing requirements. (5-8-09)
- 10. Informed Consent.** The agency must ensure that participants who receive services through the agency have obtained informed consent from the participant or his legal guardian indicating agreement with all of the elements on the individualized treatment plan including choice of the provider agency, designated services, times, dates, frequencies, objectives, goals, and exit criteria. For a minor child, informed consent must be obtained from the minor's parent or legal guardian. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**306. PERSONAL ASSISTANCE AGENCY (PAA): QUALIFICATIONS AND DUTIES.**

**01. Provider Agreement Required.** A Personal Assistance Agency is an organization that has signed the Medicaid Provider General Agreement and the Additional Terms-Personal Assistance Agencies, Aged and Disabled Waiver Provider Agreement with the Department. The PAA agrees to comply with all conditions within the agreements. A Personal Assistance Agency may also provide fiscal intermediary services in accordance with Section 329 of these rules. Each Personal Assistance Agency must direct, control, and monitor the work of each of its personal assistants. (5-8-09)

**02. Responsibilities of a Personal Assistance Agency.** A Personal Assistance Agency must be capable of and is responsible for all of the following, no matter how the PAA is organized or the form of the business entity it has chosen: (3-19-07)

**a.** Recruitment, hiring, firing, training, supervision, scheduling and payroll for personal assistants and the assurance that all providers are qualified to provide quality service; (3-19-07)

**b.** Participation in the provision of worker's compensation, unemployment compensation and all other state and federal tax withholdings; (3-19-07)

**c.** Maintenance of liability insurance coverage. Termination of either worker's compensation or professional liability insurance by the provider is cause for termination of the provider's provider agreement; (3-19-07)

**d.** Provision of a licensed professional nurse (RN) or, where applicable, a QIDP supervisor to develop and complete plans of care and provide ongoing supervision of a participant's care; (3-19-07)

**e.** Assignment of qualified personal assistants to eligible participants after consultation with and approval by the participants; (3-19-07)

**f.** Assuring that all personal assistants meet the qualifications in Subsection 305.01 of these rules; (3-19-07)

**g.** Billing Medicaid for services approved and authorized by the RMS; (3-19-07)

**h.** Collecting any participant contribution due; (5-8-09)

**i.** Conducting, at least annually, participant satisfaction or quality control reviews which are available to the Department and the general public; and (5-8-09)

~~**j.** Making referrals for PCS eligible participants for service coordination as described in Sections 720 through 779 of these rules when a need for the service is identified. (3-19-07)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**326. AGED OR DISABLED WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Adult Day Care.** Adult day care is a supervised, structured day program, outside the home of the participant, that may offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. (3-19-07)

**02. Adult Residential Care Services.** Services are those that consist of a range of services provided in a congregate setting licensed in accordance with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," that includes: (3-19-07)

**a.** Medication management; (3-19-07)

- b.** Assistance with activities of daily living; (3-19-07)
  - c.** Meals, including special diets; (3-19-07)
  - d.** Housekeeping; (3-19-07)
  - e.** Laundry; (3-19-07)
  - f.** Transportation; (3-19-07)
  - g.** Opportunities for socialization; (3-19-07)
  - h.** Recreation; and (3-19-07)
  - i.** Assistance with personal finances. (3-19-07)
  - j.** Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)
  - k.** A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)
- 03. Assistive Technology.** Assistive technology is any item, piece of equipment, or product system beyond the scope of the Medicaid State Plan, whether acquired off the shelf or customized, that is used to increase, maintain, or improve the functional capability of the participant. Assistive technology also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment. (3-19-07)
- 04. Assisted Transportation.** Individual assistance with non-medical transportation services, including escort to a person who has difficulties (physical or cognitive) using regular vehicular transportation. Such services are specified in the plan for services in order to enable waiver participants to gain access to waiver and other community services and resources. (3-19-07)
- a.** Assisted transportation service is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 860 through 876, and will not replace it. (3-19-07)
  - b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge or public transit providers will be utilized. (3-19-07)
- 05. Attendant Care.** Attendant care services are those services that involve personal and medically oriented tasks dealing with the functional needs of the participant. These services may include personal care and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional. Services may occur in the participant's home, community, work, school or recreational settings. (3-30-07)
- a.** To utilize the services of a Personal Assistance Agency acting as a fiscal intermediary, the participant family, or legal representative must be able and willing to assume responsibility for the direction of the participant's care and for personnel activities such as provider selection and supervision. If the participant, family, or legal representative is unable or unwilling to assume such responsibility, then an agency employee must be utilized. (3-19-07)
  - b.** The Department may require supervision by a health care professional if the required care is so complex that such supervision is necessary for health and safety. (3-19-07)
- 06. Chore Services.** Chore services include the services provided in Subsection 326.06.a. and 326.06.b. of this rule: (3-19-07)

- a.** Intermittent Assistance may include the following. (3-19-07)

  - i. Yard maintenance; (3-19-07)
  - ii. Minor home repair; (3-19-07)
  - iii. Heavy housework; (3-19-07)
  - iv. Sidewalk maintenance; and (3-19-07)
  - v. Trash removal to assist the participant to remain in their home. (3-19-07)
- b.** Chore activities may include the following: (3-19-07)

  - i. Washing windows; (3-19-07)
  - ii. Moving heavy furniture; (3-19-07)
  - iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)
  - iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)
  - v. Tacking down loose rugs and flooring. (3-19-07)
- c.** These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer, agency, or third party payer is willing to or is responsible for their provision. (3-19-07)
- d.** In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-19-07)
- 07. Adult Companion.** In-home services to insure the safety and well-being of a person who cannot be left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. However, the major responsibility is to provide companionship and be there in case they are needed. (3-19-07)
- 08. Consultation.** Consultation services are services to a participant or family member. Services provided by a PAA to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self reliance possible for the participant/family. Services to the provider are for the purpose of understanding the special needs of the participant and the role of the care giver. (3-19-07)
- 09. Home Delivered Meals.** Meals which are designed to promote adequate participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to participants who: (3-19-07)

  - a.** Rent or own their own home; (3-19-07)
  - b.** Are alone for significant parts of the day; (3-19-07)
  - c.** Have no regular caretaker for extended periods of time; and (3-19-07)
  - d.** Are unable to prepare a balanced meal. (3-19-07)
- 10. Homemaker Services.** Assistance to the participant with light housekeeping, laundry, assistance

with essential errands, meal preparation, and other light housekeeping duties if there is no one else in the household capable of performing these tasks. (3-19-07)

**11. Home Modifications.** Minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization. Such adaptations may include: (3-19-07)

**a.** The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but will exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (3-19-07)

**b.** Permanent environmental modifications are limited to modifications to a home owned by the participant or the participant's family and the home is the participant's principal residence. (3-19-07)

**c.** Portable or Non-Stationary Modifications. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)

**12. Personal Emergency Response System.** A system which may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical, or environmental emergencies through the provision of communication connection systems. PERS are limited to participants who: (3-19-07)

**a.** Rent or own their home, or live with unpaid relatives; (3-19-07)

**b.** Are alone for significant parts of the day; (3-19-07)

**c.** Have no caretaker for extended periods of time; and (3-19-07)

**d.** Would otherwise require extensive routine supervision. (3-19-07)

**13. Psychiatric Consultation.** Psychiatric Consultation is direct consultation and clinical evaluation of participants, who are currently experiencing or may be expected to experience a psychological, behavioral, or emotional crisis. This service may provide training to the direct service provider or participant's family related to the needs of a participant. These services also provide emergency intervention involving the direct support of the participant in crisis. (3-19-07)

**14. Respite Care.** Occasional breaks from care giving responsibilities to non-paid care givers. The care giver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other waiver services which are duplicative in nature. Respite care services provided under this waiver will not include room and board payments. (3-19-07)

~~**15. Service Coordination.** Service coordination includes all of the activities contained in Section 727 of these rules. Such services are designed to foster independence of the participant, and will be time limited. (3-19-07)~~

~~**a.** All services will be provided in accordance with an individual service plan. All services will be incorporated into the Individual Service plan and authorized by the RMS. (3-19-07)~~

~~**b.** The service coordinator must notify the RMS, the Personal Assistance Agency, as well as the medical professionals involved with the participant of any significant change in the participant's situation or condition. (3-19-07)~~

**16.5. Skilled Nursing Services.** Intermittent or continuous oversight, training, or skilled care which is within the scope of the Nurse Practice Act and as such care must be provided by a licensed registered nurse, or

licensed practical nurse under the supervision of a registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. Nursing services may include but are not limited to: (3-19-07)

- a. The insertion and maintenance of nasogastric tubes and the monitoring or installation of feeding material; (3-19-07)
- b. The maintenance of volume ventilators including associated tracheotomy care, tracheotomy, and oral pharyngeal suctioning. (3-19-07)
- c. Maintenance and monitoring of IV fluids or nutritional supplements which are to be administered on a continuous or daily basis; (3-19-07)
- d. Injections; (3-19-07)
- e. Blood glucose monitoring; and (3-19-07)
- f. Blood pressure monitoring. (3-19-07)

**176. Habilitation.** Habilitation services consist of an integrated array of individually-tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in alternate family homes. (3-30-07)

- a. Residential habilitation services assist the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-30-07)
  - i. Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)
  - ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)
  - iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, as well as following home safety, first aid, and emergency procedures; (3-30-07)
  - iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)
  - v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; or (3-30-07)
  - vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)
- b. Day rehabilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in

which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day rehabilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day rehabilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (4-2-08)

**187. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

**a.** Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained by RMS in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (3-30-07)

**b.** Federal Financial Participation (FFP) can not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment programs, payments that are passed through to beneficiaries of supported employment programs, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-30-07)

**198. Behavior Consultation or Crisis Management.** Behavior consultation or crisis management consists of services that provide direct consultation and clinical evaluation of participants who are currently experiencing, or are expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also include emergency back-up that provides direct support and services to a participant in crisis. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**329. AGED OR DISABLED WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

Each provider must have a signed provider agreement with the Department for each of the services it provides. (3-19-07)

**01. Employment Status.** Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)

**02. Fiscal Intermediary Services.** An agency that has responsibility for the following: (5-8-09)

**a.** To directly assure compliance with legal requirements related to employment of waiver service providers; (3-19-07)

**b.** To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves; (3-19-07)

**c.** To bill the Medicaid program for services approved and authorized by the Department; (3-19-07)

**d.** To collect any participant participation due; (3-19-07)

- e. To pay personal assistants and other waiver service providers for service; (3-19-07)
- f. To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; (3-19-07)
- g. To assure that personal assistants providing services meet the standards and qualifications under in this rule; (5-8-09)
- h. To maintain liability insurance coverage; (5-8-09)
- i. To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public; (5-8-09)
- ~~j. To make referrals for service coordination for a PCS-eligible participant when a need for such services is identified; and (5-8-09)~~
- ~~k. To obtain such criminal background checks and health screens on new and existing employees of record and fact as required. (5-8-09)~~

**03. Provider Qualifications.** All providers of homemaker, respite care, adult day health, transportation, chore companion, attendant adult residential care, home delivered meals, and behavior consultants must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's approved Aged and Disabled waiver as approved by CMS. (3-19-07)

- a. A waiver provider can not be a relative of any participant to whom the provider is supplying services. (3-19-07)
- b. For the purposes of Section 329 of these rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)
- c. Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," including: (4-2-08)
  - i. Companion services; (4-2-08)
  - ii. Chore services; and (4-2-08)
  - iii. Respite care services. (4-2-08)

**04. Specialized Medical Equipment Provider Qualifications.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. (3-19-07)

**05. Nursing Service Provider Qualifications.** Nursing Service Providers must be licensed as an R.N. or L.P.N. in Idaho or be practicing on a federal reservation and be licensed in another state. (3-19-07)

**06. Psychiatric Consultation Provider Qualifications.** Psychiatric Consultation Providers must have: (3-19-07)

- a. A master's degree in a behavioral science; (3-19-07)
- b. Be licensed in accordance with state law and regulations; or (3-19-07)
- c. A bachelor's degree and work for an agency with direct supervision from a licensed or Ph.D. (3-19-07)



psychologist and have one (1) year's experience in treating severe behavior problems. (4-2-08)

**d.** Psychiatric consultation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

~~**07.** **Service Coordination.** Service coordinators and service coordination agencies must meet the requirements specified in Section 729 of these rules unless specifically modified by another section of these rules. (3-19-07)~~

**08.** **Consultation Services.** Services must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. (3-19-07)

**09.** **Adult Residential Care Providers.** Adult Residential Care providers will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-2-08)

**10.** **Home Delivered Meals.** Providers must be a public agency or private business and must be capable of: (3-19-07)

**a.** Supervising the direct service; (3-19-07)

**b.** Providing assurance that each meal meets one-third (1/3) of the recommended daily allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (3-19-07)

**c.** Delivering the meals in accordance with the plan for care, in a sanitary manner and at the correct temperature for the specific type of food; (3-19-07)

**d.** Maintaining documentation that the meals served are made from the highest USDA grade for each specific food served; and (3-19-07)

**e.** Being inspected and licensed as a food establishment by the district health department. (3-19-07)

**11.** **Personal Emergency Response Systems.** Providers must demonstrate that the devices installed in waiver participant's homes meet Federal Communications Standards, Underwriter's Laboratory Standards, or equivalent standards. (3-19-07)

**12.** **Adult Day Care.** Facilities that provide adult day care must be maintained in safe and sanitary manner. (3-30-07)

**a.** Facilities will provide the necessary space and staff to meet the needs of the participants accepted by the provider. Supervision must be provided by the facility as necessary, to assure the safety and comfort of participants served. (3-19-07)

**b.** Providers who accept participants into their homes for services must maintain the homes in a safe and sanitary manner. Supervision must be provided by the provider as necessary to assure the safety and comfort of participants served. (3-30-07)

**c.** Adult day care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks History and Background Checks." (4-2-08)

**132.** **Assistive Technology.** All items must meet applicable standards of manufacture, design and installation. The equipment must be the most cost effective to meet the participant's need. (3-19-07)

**143.** **Assisted Transportation Services.** See Subsection 329.03 of this rule for provider qualifications. (3-19-07)

**154.** **Attendant Care.** See Subsection 329.03 of this rule for provider qualifications. Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**165.** **Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**176.** **Home Modifications.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (3-19-07)

**187.** **Residential Habilitation Supported Living Provider Qualifications.** Residential habilitation supported living services must be provided by an agency that is capable of supervising the direct services provided. Individuals who provide residential habilitation services in their ~~own~~ home of the participant (supported living) must be certified employed by ~~the Department as a certified family home and must be affiliated with~~ a residential habilitation agency. ~~The residential habilitation agency provides oversight, training, and quality assurance to the certified family home provider. Individuals who provide residential habilitation services in the home of the participant (supported living), must be employed by a residential habilitation agency.~~ Providers of residential habilitation services must meet the following requirements: (3-30-07)(7-1-11)T

- a. Direct service staff must meet the following minimum qualifications: (3-30-07)
  - i. Be at least eighteen (18) years of age; (3-30-07)
  - ii. Be a high school graduate or have a GED or demonstrate the ability to provide services according to a plan of care; (3-30-07)
  - iii. Have current CPR and First Aid certifications; (3-30-07)
  - iv. Be free from communicable diseases; (3-30-07)
  - v. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
  - vi. Residential habilitation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks;" (4-2-08)
  - vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)
- b. The provider agency is responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the participant. Skill training may be provided by a Program Coordinator who has demonstrated experience in writing skill training programs, if no agency is available in their geographic area as outlined in Subsection 329.18.c. of this rule. (3-30-07)
- c. Residential habilitation providers who are unable to be employed by an agency because one is not available in their geographic area, must receive program development, implementation and oversight of service delivery services qualified by a program coordinator who ~~has a valid service coordination provider agreement with~~

~~the Department and who has taken a traumatic brain injury training course~~ is approved by the Department.

~~(3-30-07)~~(7-1-11)T

**d.** Prior to delivering services to a participant, direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-30-07)

- i. Purpose and philosophy of services; (3-30-07)
- ii. Service rules; (3-30-07)
- iii. Policies and procedures; (3-30-07)
- iv. Proper conduct in relating to waiver participants; (3-30-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)
- vi. Participant rights; (3-30-07)
- vii. Methods of supervising participants; (3-30-07)
- viii. Working with individuals with traumatic brain injuries; and (3-30-07)
- ix. Training specific to the needs of the participant. (3-30-07)

**e.** Additional training requirements must be completed within six (6) months of employment ~~or~~ ~~affiliation~~ with the residential habilitation agency and include at a minimum: ~~(3-30-07)~~(7-1-11)T

- i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
- ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
- iii. Feeding; (3-30-07)
- iv. Communication; (3-30-07)
- v. Mobility; (3-30-07)
- vi. Activities of daily living; (3-30-07)
- vii. Body mechanics and lifting techniques; (3-30-07)
- viii. Housekeeping techniques; and (3-30-07)
- ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)

**f.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed; and (3-30-07)

**§19. Residential Habilitation Program Coordination for Certified Family Home Providers.** When residential habilitation services are provided in the provider's home, the provider must meet the requirements in IDAPA 16.03.19, "Rules Governing Certified Family Homes" and must receive residential habilitation program coordination from a qualified program coordinator approved by the Department. Non-compliance with the certification process is cause for termination of the provider agreement or contract. ~~(3-30-07)~~(7-1-11)T

**§20. Day Rehabilitation Provider Qualifications.** Providers of day rehabilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide

documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day rehabilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**201. Supported Employment Service Providers.** Supported employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State-approved provider, and have taken a traumatic brain injury training course approved by the Department. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**202. Behavior Consultation or Crisis Management Service Providers.** Behavior consultation or crisis management providers must meet the following: (3-30-07)

a. Have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, or a closely related course of study; (3-30-07)

b. Be a licensed pharmacist; or (3-30-07)

c. Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D., with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (3-30-07)

d. Take a traumatic brain injury training course approved by the Department. (3-30-07)

e. Emergency back-up providers must also meet the minimum provider qualifications under residential habilitation services. (3-30-07)

f. Behavior consultation or crisis management service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**507. ~~BEHAVIORAL HEALTH~~ ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION (PA).**

The purpose of ~~Behavioral Health~~ adult developmental disability services ~~P~~prior ~~A~~authorization is to assure the provision of the right care, in the right place, at the right price, and with the right outcomes in order to enhance health and safety, and to promote participants' rights, self-determination, and independence. Prior authorization involves the assessment of the need for services, development of a budget, development of a plan of services, prior approval of services, and a quality improvement program. Services are reimbursable if they are identified on the authorized plan of service and are consistent with the purpose and rule for prior authorization as well as rules for the specific service. ~~(3-19-07)~~(7-1-11)T

**508. ~~BEHAVIORAL HEALTH~~ ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATIONS: DEFINITIONS.**

For the purposes of these rules the following terms are used as defined below. ~~(3-19-07)~~(7-1-11)T

**01. Adult.** A person who is eighteen (18) years of age or older. (3-29-10)

**02. Assessment.** A process that is described in Section 509 of these rules for program eligibility and in Section 512 of these rules for plan of service. (3-19-07)

- 03. Clinical Review.** A process of professional review that validates the need for continued services. (3-19-07)
- 04. Community Crisis Support.** Intervention for participants who are at risk of losing housing, employment or income, or who are at risk of incarceration, physical harm, family altercations or other emergencies. (3-19-07)
- 05. Concurrent Review.** A clinical review to determine the need for continued prior authorization of services. (3-19-07)
- 06. Exception Review.** A clinical review of a plan that falls outside the established standards. (3-19-07)
- 07. Interdisciplinary Team.** For purposes of these rules, the interdisciplinary team is a team of professionals, determined by the Department, that reviews requests for reconsideration. (3-19-07)
- 08. Level of Support.** An assessment score derived from the SIB-R that indicates types and amounts of services and supports necessary to allow the individual to live independently and safely in the community. (3-19-07)
- 09. Person-Centered Planning Process.** A meeting facilitated by the plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service. (3-19-07)
- 10. Person-Centered Planning Team.** The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (3-19-07)
- 11. Plan Developer.** A paid or non-paid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (3-19-07)
- 12. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. (3-19-07)
- ~~**13. Plan Monitor Summary.** A summary that provides information to evaluate plans and initiate action to resolve any concerns. The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status reviews referred to in Subsection 513.06 of these rules. The plan monitor will use the provider information to evaluate plans and initiate action to resolve any concerns. (3-19-07)~~
- 143. Plan of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (3-19-07)
- 154. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules. (3-19-07)
- 165. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (3-19-07)
- 176. Right Care.** Accepted treatment for defined diagnosis, functional needs and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. (3-19-07)
- 187. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. (3-19-07)
- 198. Right Price.** The most integrated and least expensive services that are sufficiently intensive to

address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. (3-19-07)

~~219.~~ **Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. (3-19-07)

~~240.~~ **Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (3-19-07)

~~221.~~ **Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under Sections 729 through 732 of these rules. (3-19-07)

~~232.~~ **Services.** Services paid for by the Department that enable the individual to reside safely and effectively in the community. (3-19-07)

~~243.~~ **SIB-R.** The Scales of Independent Behavior - Revised (SIB-R) is a standardized assessment tool evaluating functional skill levels and evaluating maladaptive behavior. The SIB-R is used by the Department to determine developmental disability eligibility, waiver eligibility, skill level to identify the participant's needs for the plan of service, and for determining the participant budget. (3-19-07)

~~254.~~ **Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (3-19-07)

**509. ~~BEHAVIORAL HEALTH~~ ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: ELIGIBILITY DETERMINATION.**

The Department will make the final determination of an individual's eligibility, based upon the assessments and evaluations administered by the Department. Initial and annual assessments must be performed by the Department. The purpose of the assessment is to determine a participant's eligibility for developmental disabilities services in accordance with Section 66-402, Idaho Code, and Sections 500 through 506 of these rules and for ICF/ID level of care for waiver services in accordance with Section 584 of these rules. ~~(3-19-07)~~(7-1-11)T

**01. Initial Assessment.** For new applicants, an assessment must be completed within thirty (30) days from the date a completed application is submitted. (3-19-07)

**02. Annual Assessments.** Assessments must also be completed for current participants at the time of their annual eligibility redetermination. The assessor must evaluate whether assessments are current and accurately describe the status of the participant. At least sixty (60) days before the expiration of the current plan of service: (3-19-07)

**a.** The assessment process must be completed; and (3-19-07)

**b.** The assessor must provide the results of the assessment to the participant. (3-19-07)

**03. Determination of Developmental Disability Eligibility.** The evaluations or assessments that are required for determining developmental disabilities for a participant's eligibility for developmental disabilities services must include a medical/social history and a functional assessment. Participants must provide the results of psychometric testing if eligibility for developmental disabilities services is based on an intellectual disability and they have no prior testing or prior testing is inconclusive. Documentation of diagnosis is required for participants whose eligibility is based on developmental disabilities other than an intellectual disability. A SIB-R will be administered by the Department for use in this determination. (3-19-07)

**04. ICF/ID Level of Care Determination for Waiver Services.** The assessor will determine ICF/ID level of care for adults in accordance with Section 584 of these rules. (3-19-07)

**510. (RESERVED)**

**511. ~~INDIVIDUALS WITH~~ ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: - COVERAGE AND LIMITATIONS.**

The scope of these rules defines prior authorization for the following Medicaid ~~behavioral health~~ developmental disability services for adults: ~~(3-19-07)(7-1-11)T~~

**01. DD Waiver Services.** DD Waiver services as described in Sections 700 through 719 of these rules; and (3-29-10)

**02. Developmental Disabilities Agency Services.** Developmental Disabilities Agency services as described in Sections 649 through 659 of these rules and IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)"; and (7-1-11)

**03. Service Coordination.** Service Coordination for persons with developmental disabilities as described in Sections 720 through 779 of these rules. (3-19-07)

**512. ~~BEHAVIOR HEALTH~~ ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: PROCEDURAL REQUIREMENTS.**

**01. Assessment for Plan of Service.** The assessment for a plan of service is required for all participants prior to the development of the plan of service. This assessment must include the following in Subsections 512.02 through 512.06 of these rules. (3-19-07)

**02. Physician's History and Physical.** The history and physical must include a physician's referral for nursing services under the DD waivers and for developmental disabilities agencies' services, if they are anticipated to be part of the plan of service. A physician's history and physical is required within the year prior to the initiation of service and thereafter on a frequency determined by the physician. For participants in Healthy Connections: (3-29-10)

**a.** The Healthy Connections physician may delegate to the Department the authority to approve developmental disability services. (3-19-07)

**b.** The Healthy Connections physician must conduct the history and physical, and may refer the participant for other evaluations. (3-19-07)

**03. Medical, Social, and Developmental History.** The medical, social and developmental history is used to document the participant's medical social and developmental history information. A current medical social and developmental history must be evaluated prior to the initiation of DDA services and must be reviewed annually to assure it continues to reflect accurate information about the participant's status. ~~(3-19-07)(7-1-11)T~~

**a.** A medical, social and developmental history for each adult participant is completed by the Department or its contractor. Providers should obtain and utilize the medical, social developmental history documents generated by the Department or its contractor when one is necessary for adult program or plan development. (7-1-11)T

**b.** A medical social and developmental history for children is required when the child is accessing DDA services for the first time, and must reflect accurate information about the participant's status. (7-1-11)T

**c.** After the initial medical social development history for children, additional Medical Social and Development History services for children will be reimbursed if a qualified professional determines that it no longer reflects the current status of the participant. Please refer to Subsection 655 of these rules. (7-1-11)T

**04. SIB-R.** The results of the SIB-R are used to determine the level of support for the participant. A current SIB-R assessment must be evaluated prior to the initiation of service and must be reviewed annually to assure it continues to reflect the functional status of the participant. (3-19-07)

**a.** The SIB-R for adults is completed by the Department or its contractor. Providers must obtain and

utilize the document generated by the Department or its contractor when one is necessary for program or plan development. (7-1-11)T

**b.** The SIB-R for children is required for all children accessing DDA services for the first time. (7-1-11)T

**c.** After the initial SIB-R assessment for children, additional SIB-R assessments will be reimbursed if a qualified professional determines that the assessment no longer reflects the current status of the participant. Please refer to Subsection 655 of these rules. (7-1-11)T

**05. Medical Condition.** The participant's medical conditions, risk of deterioration, living conditions, and individual goals. (3-19-07)

**06. Behavioral or Psychiatric Needs.** Behavioral or psychiatric needs that require special consideration. (3-19-07)

**513. ~~BEHAVIOR HEALTH~~ ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: PLAN OF SERVICE.**

In collaboration with the participant, the Department must assure that the participant has one (1) plan of service. This plan of service is based on the individualized participant budget referred to in Section 514 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (~~3-19-07~~)(7-1-11)T

**01. Qualifications of a Paid Plan Developer.** Neither a provider of direct service to the participant nor the assessor may be chosen to be the paid plan developer. Family members and all others who wish to be paid for plan development must be employed as a service coordinator as defined in Sections 729 through 732 of these rules. (3-19-07)

**02. Plan Development.** The plan must be developed with the participant. With the participant's consent, the person-centered planning team may include family members, guardian, or individuals who are significant to the participant. In developing the plan of service, the plan developer and participant must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. The plan of service must be submitted within forty-five (45) days prior to the expiration of the existing plan of service unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within this time period, authorization for provider payments may be terminated. (3-19-07)

**03. Prior Authorization Outside of These Rules.** The plan developer must ensure that all services that require prior authorization outside of these rules are submitted to the appropriate unit of the Department. These services include: (3-19-07)

**a.** Durable Medical Equipment (DME); (3-19-07)

**b.** Transportation; and (3-19-07)

**c.** Physical therapy, occupational therapy, and speech-language pathology services provided outside of a Development Disabilities Agency (DDA). (4-2-08)

**04. No Duplication of Services.** The plan developer will ensure that there is no duplication of services *if there are multiple plans of service*. Duplicate services will not be authorized. (~~3-19-07~~)(7-1-11)T

**05. Plan Monitoring.** The participant, service coordinator or plan monitor must monitor the plan. The plan developer is the plan monitor unless there is a service coordinator, in which case the service coordinator assumes the roles of both service coordinator and plan monitor. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following: (3-19-07)



- a. Review of the plan of service in a face-to-face contact with the participant to identify the current status of programs and changes if needed; (3-19-07)
- b. Contact with service providers to identify barriers to service provision; (3-19-07)
- c. Discuss with participant satisfaction regarding quality and quantity of services; and (3-19-07)
- d. Review of provider status reviews ~~and complete a plan monitor summary after the six (6) month review and for annual plan development.~~ (3-19-07)(7-1-11)T
- e. The provider will immediately report all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, as well as injuries of unknown origin to the agency administrator, the Regional Medicaid Services (RMS) Department, the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law. (3-19-07)(7-1-11)T

**06. Provider Status Reviews.** Service providers, with exceptions identified in Subsection 513.11 of these rules, must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual and annual reviews must include: (3-19-07)

- a. The status of supports and services to identify progress; (3-19-07)
- b. Maintenance; or (3-19-07)
- c. Delay or prevention of regression. (3-19-07)

~~**07. Plan Monitor Summary.** The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status review. (3-19-07)~~

~~**08. Content of the Plan of Service.** The plan of service must identify the type of service to be delivered, goals to be addressed within the plan year, frequency of supports and services, and identified service providers. The plan of service must include activities to promote progress, maintain functional skills, or delay or prevent regression. (3-19-07)~~

~~**09. Negotiation for the Plan of Service.** If the services requested on the plan of service fall outside the individualized budget or do not reflect the assessed needs of the participant, the plan developer and the participant will have the opportunity to negotiate the plan of service with the Department's care manager. Services will not be paid for unless they are authorized on the plan of service. (3-29-10)~~

~~**10. Informed Consent.** Unless the participant has a guardian with appropriate authority, the participant must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. If not, the plan or amendment must be referred to the Bureau of Care Management's Medicaid Consumer Relations Specialist to negotiate a resolution with members of the planning team. (3-19-07)~~

~~**11. Provider Implementation Plan.** Each provider of Medicaid services, subject to prior authorization, must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. (3-19-07)~~

- a. Exceptions. An implementation plan is not required for waiver providers of: (3-19-07)
  - i. Specialized medical equipment; (3-19-07)
  - ii. Home delivered meals; (3-19-07)

- iii. Environmental modifications; (3-19-07)
  - iv. Non-medical transportation; (3-19-07)
  - v. Personal emergency response systems (PERS); (3-19-07)
  - vi. Respite care; and (3-19-07)
  - vii. Chore services. (3-19-07)
- b.** Time for Completion. The implementation plan must be completed within fourteen (14) days after the initial provision of service, and revised whenever participant needs change. (3-19-07)
- c.** Documentation of Changes. Documentation of Implementation Plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, the signature of the person making the change complete with the date and title. (3-19-07)

**120. Addendum to the Plan of Service.** A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on a changes in a participant's need or demonstrated outcomes to a cost, addition of a service or increase to a service, or a change of provider. Additional assessments or information may be clinically necessary. Adjustment of the plan of service is subject to prior authorization by the Department. ~~(3-19-07)~~(7-1-11)T

**131. Community Crisis Supports.** Community crisis supports are interventions for participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. Community crisis support may be authorized the following business day after the intervention if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. (3-19-07)

**a.** Emergency Room. Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community. (3-19-07)

**b.** Before Plan Development. Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. (3-19-07)

**c.** Crisis Resolution Plan. After community crisis support has been provided, the provider of the community crisis support service must complete a crisis resolution plan and submit it to the Department for approval within three (3) business days. (3-19-07)

**142. Annual Reauthorization of Services.** A participant's plan of service must be reauthorized annually. The Department must review and authorize the new plan of service prior to the expiration of the current plan. (3-19-07)

**a.** Plan Developer Responsibilities for Annual Reauthorization. A new plan of service must be provided to the Department by the plan developer at least forty-five (45) days prior to the expiration date of the current plan. Prior to this, the plan developer must: (3-19-07)

i. Notify the providers who appear on the plan of service of the annual review date. (3-19-07)

ii. Obtain a copy of the current annual provider status review from each provider for use by the person-centered planning team. Each provider status review must meet the requirements in Subsection 513.14.d of these rules. (3-19-07)

- iii. Convene the person-centered planning team to develop a new plan of service. (3-19-07)
- b. Evaluation and Prior Authorization of the Plan of Service. The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 507 and 513 of these rules. (3-19-07)
- c. Adjustments to the Annual Budget and Services. The annual budget and services may be adjusted by the Department based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. ~~(3-19-07)~~(7-1-11)T
- d. Annual Status Reviews Requirement. If the provider's annual status reviews are not submitted with the annual plan, services will not be authorized at the time of the annual reauthorization. These services may be added to the plan of service only by means of an addendum to the plan in accordance with Subsection 513.12 of these rules. (3-19-07)
- e. Reapplication After a Lapse in Service. For participants who are re-applying for service after a lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (3-19-07)
- f. Annual Assessment Results. An annual assessment must be completed in accordance with Section 512 of these rules. (3-19-07)

**153. ~~Reconsiderations, Complaints, and Administrative Appeals.~~** ~~(3-19-07)~~(7-1-11)T

~~a. *Reconsideration. Participants with developmental disabilities who are adversely affected by a Department decision regarding program eligibility and authorization of services under these rules may request a reconsideration within twenty-eight (28) days from the date the decision was mailed. The reconsideration must be performed by an interdisciplinary team as determined by the Department with at least one (1) individual who was not involved in the original decision. The reviewers must consider all information and must issue a written decision within fifteen (15) days of receipt of the request.*~~ (3-19-07)

~~ba. *Complaints. Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Division of Medicaid, Bureau of Care Management.*~~ (3-19-07)(7-1-11)T

~~eb. *Administrative Appeals. A participant who disagrees with a Department decision regarding program eligibility and authorization of services under these rules may file an appeal. Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings."*~~ (3-19-07)(7-1-11)T

**514. ~~BEHAVIORAL HEALTH ADULT DEVELOPMENTAL DISABILITY SERVICES~~ PRIOR AUTHORIZATION: PROVIDER REIMBURSEMENT.**

Providers are reimbursed on a fee for service basis based on a participant budget. ~~(3-19-07)~~(7-1-11)T

~~01. *Methodology for Developing Participant Budget Prior to October 1, 2006. The participant budget is developed using the following methodology:*~~ (3-19-07)

~~a. *Evaluate the past three (3) years of Medicaid expenditures from the participant's profile, excluding physician, pharmacy, and institutional services;*~~ (3-19-07)

~~b. *Review all assessment information identified in Section 512 of these rules;*~~ (3-19-07)

~~c. *Identify the level of support derived from the most current SIB R. The level of support is a combination of the individual's functional abilities and maladaptive behavior as determined by the SIB R. Six (6) broad levels of support have been identified on a scale from zero to one hundred (0-100) (see Table 514.01.e.). There are six (6) levels of support, each corresponding to a support score range.*~~

<del>TABLE 514.01.e. LEVEL OF SUPPORT</del>	
<del>Support Score Range</del>	<del>Level of Support</del>
<del>1-24</del>	<del>Pervasive</del>
<del>25-39</del>	<del>Extensive</del>
<del>40-54</del>	<del>Frequent</del>
<del>55-69</del>	<del>Limited</del>
<del>70-84</del>	<del>Intermittent</del>
<del>85-100</del>	<del>Infrequent</del>

~~(3-19-07)~~

~~d. Correlate the level of support identified by the SIB-R to a budget range derived from the expenditures of individuals at the same level of support across the adult DD population. This correlation will occur annually prior to the development to the plan of service.~~ ~~(3-19-07)~~

~~02. Negotiating an Appropriate Participant Budget Prior to October 1, 2006. The assessor, the participant, and the plan developer must use all the information from Subsections 514.01.a. through 514.01.d. of these rules to negotiate an appropriate budget that will support the participant's identified needs.~~ ~~(3-19-07)~~

**031. Individualized Budget Beginning on October 1, 2006.** Beginning October 1, 2006, for DD waiver participants, and beginning January 1, 2007, for all other adult DD participants, the Department sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, and medical needs, ~~and other individual factors~~ related to the participant's disability. Using these specific participant factors, the budget-setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. ~~(3-29-10)(7-1-11)T~~

~~a. During the implementation phase of using the new individualized budget-setting methodology, the budget calculation will include reviewing the participant's previous year's budget. When the calculated budget is less than five percent (5%) above or below the previous year's budget, the participant's set budget amount is the calculated budget amount. When the calculated budget is greater than five percent (5%) above or below the previous year's budget, the participant's set budget amount is the previous year's budget amount. The Department will collect information on discrepancies between the calculated budget and the previous year's budget as part of the ongoing assessment and improvement process of the budget-setting methodology.~~ ~~(3-19-07)~~

~~ba. The Department notifies each participant of his set budget amount as part of the eligibility determination process or annual redetermination process. The notification will include how the participant may request reconsideration of appeal the set budget amount.~~ ~~(3-19-07)(7-1-11)T~~

~~eb. Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget condition resulting in a need for services that meet medical necessity criteria, and this is not reflected on the current inventory of individual needs.~~ ~~(3-19-07)(7-1-11)T~~

**043. Residential Habilitation - Supported Living Acuity-Based Levels of Support.** Reimbursement for residential habilitation - supported living is based on the participant's assessed level of support need. All plans of service that include supported living must include community integration goals that provide for maintained or enhanced independence, quality of life, and self-determination. As a participant's independence increases and he is less dependent on supports, he must transition to less intense supports. ~~(3-19-07)~~

**a.** High support is for those participants who require twenty-four (24) hour per day supports and supervision and have an SIB-R Support Level of Pervasive, Extensive, or Frequent. High support allows for a blend of one-to-one and group staffing. Participants authorized at the high support daily rate will not be authorized to receive developmental therapy services, adult day care, or non-medical transportation. These services are included in the high support daily rate. (3-19-07)

**b.** Intense support is for those exceptional participants who require intense, twenty-four (24) hour per day supports and supervision. This support level typically requires one-on-one staffing, but requests for a blend of one-on-one and group staffing will be reviewed on a case-by-case basis. Participants authorized at the intense support daily rate will not be authorized to receive developmental therapy services, adult day care, or non-medical transportation. These services are included in the intense support daily rate. To qualify for this level of support, participants must be evaluated to meet one or more of the following criteria: (3-19-07)

**i.** Recent felony convictions or charges for offenses related to the serious injury or harm of another person. These participants must have been placed in a supported living setting directly from incarceration or directly after being diverted from incarceration. (3-19-07)

**ii.** History of predatory sexual offenses and are at high risk to re-offend based on a sexual offender risk assessment completed by an appropriate professional. (3-19-07)

**iii.** Documented, sustained history of serious aggressive behavior showing a pattern of causing harm to themselves or others. The serious aggressive behavior must be such that the threat or use of force on another person makes that person reasonably fear bodily harm. The participant must also have the capability to carry out such a threat. The frequency and intensity of this type of aggressive behavior must require continuous monitoring to prevent injury to themselves or others. (3-19-07)

**iv.** Chronic or acute medical conditions that are so complex or unstable that one-to-one staffing is required to provide frequent interventions and constant monitoring. Without this intervention and monitoring the participant would require placement in a nursing facility, hospital, or ICF/ID with twenty-four (24) hour on-site nursing. Verification of the complex medical condition and the need for this level of service requires medical documentation. (3-19-07)

**c.** Hourly support is for those individuals that do not meet criteria for either high or intense supports or those individuals who qualify for a daily rate but whose needs can be met with less than twenty-four (24) per day support. The combination of hourly supported living, developmental therapy, community supported employment, and adult day care will not be authorized to exceed the maximum set daily amount established by the Department except when all of the following conditions are met: (3-19-07)

**i.** The participant is eligible to receive the high support daily rate; (3-19-07)

**ii.** Community supported employment is included in the plan and is causing the combination to exceed the daily limit; (3-19-07)

**iii.** There is documentation that the Person-Centered Planning team has explored other options including using lower cost services and natural supports; and (3-19-07)

**iv.** The participant's health and safety needs will be met using hourly services despite having been assessed to qualify for twenty-four (24) hour care. (3-19-07)

**515. ~~BEHAVIORAL HEALTH~~ ADULT DEVELOPMENTAL DISABILITY SERVICES: QUALITY ASSURANCE AND IMPROVEMENT.**

**01. Quality Assurance.** Quality Assurance consists of audits and reviews to assure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) days after the results are received. The Department may terminate authorization of service for providers who do not comply with the corrective action plan. (3-19-07)

**02. Quality Improvement.** The Department may gather and utilize information from providers to evaluate customer satisfaction, participant satisfaction, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for participants. (3-19-07)

**03. Exception Review.** ~~In order to assure health and safety of the participant, the Department will complete an *clinical exception* review of plans of service *that requesting residential habilitation High or Intense Supported Living when the request exceeds the assigned* budget authorized by the assessor, *or are inconsistent with the participant's assessed needs and when the services requested on the plan are required, based on medical necessity in accordance with Subsection 012.14 of these rules.* *The supporting documentation must demonstrate the medical necessity of services in the plan of service.* (3-19-07)(7-1-11)T~~

**04. Concurrent Review.** The Department will obtain the necessary information to determine that participants continue to meet eligibility criteria, services continue to be clinically necessary, services continue to be the choice of the participant, and services constitute appropriate care to warrant continued authorization or need for the service. (3-19-07)

**05. Abuse, Fraud, or Substandard Care.** Reviewers finding suspected abuse, fraud, or substandard care must refer their findings for investigation to the Department and other regulatory or law enforcement agencies for investigation. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**581. ICF/ID: ELIGIBILITY.**

Entitlement to medical assistance participation in the cost of long-term care exists when the individual is eligible for medical assistance and the *Regional Nurse Reviewer (RNR) Department* has determined that the individual meets the criteria for ICF/ID services. Entitlement must be determined prior to authorization of payment for such care for an individual who is either a participant of or an applicant for medical assistance. (3-19-07)(7-1-11)T

**582. ICF/ID: DETERMINATION OF ENTITLEMENT FOR MEDICAID PAYMENT.**

Applications for Medicaid payment of an individual with an intellectual disability or related condition, in an ICF/ID will be through the Department's ~~RMS staff~~. All required information necessary for a medical entitlement determination must be submitted to the *Regional Medicaid Services Department* before a determination and approval for payment is made. The effective date of Medicaid payment will be no earlier than the physician's signed and dated certification for ICF/ID level of care. (3-19-07)(7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**651. DDA SERVICES: COVERAGE REQUIREMENTS AND LIMITATIONS.**

Developmental disabilities agency services must be recommended by a physician or other practitioner of the healing arts. The following therapy services are reimbursable when provided in accordance with these rules. (7-1-11)

**01. Required DDA Services.** Each DDA is required to provide developmental therapy; in addition, each DDA must provide or make available the following services: psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy. Developmental therapy must be provided by qualified employees of the agency. Psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy must either be provided by qualified employees of the agency or through a formal written agreement. (7-1-11)

**a. Sufficient Quantity and Quality.** All required services provided must be sufficient in quantity and quality to meet the needs of each person receiving services, and must be provided by qualified individuals in accordance with the requirements in Section 657 of these rules. (7-1-11)

**b.** When a Required Service Is Not Available. When a required service, other than developmental therapy, is not provided by the agency due to a documented shortage of available providers in a specific geographic area, the DDA must document its effort to secure the service or facilitate the referral for the needed service, including notifying the service coordinator, when the participant has one. (7-1-11)

**02. Requirements to Deliver Developmental Therapy.** Developmental therapy may be delivered in a developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy. Developmental therapy services must be delivered by Developmental Specialists or paraprofessionals qualified in accordance with these rules, based on a comprehensive developmental assessment completed prior to the delivery of developmental therapy. Developmental therapy will not be reimbursed if the participant is receiving psychosocial rehabilitation or partial care services as this is a duplication of services. ~~(7-1-11)~~(7-1-11)T

**a.** Areas of Service. These services must be directed toward the rehabilitation or habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. (7-1-11)

**b.** Age-Appropriate. Developmental therapy includes instruction in daily living skills the participant has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy. Developmental therapy must be age-appropriate. (7-1-11)

**c.** Tutorial Activities and Educational Tasks are Excluded. Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the participant's disability. (7-1-11)

**d.** Settings for Developmental Therapy. Developmental therapy, in both individual and group formats, must be available in both community-based and home-based settings, and be based on participant needs, interests, or choices. (7-1-11)

**e.** Staff-to-Participant Ratio. When group developmental therapy is center-based, there must be a minimum of one (1) qualified staff, who may be a paraprofessional or a Developmental Specialist, providing direct services for every twelve (12) participants. Additional staff must be added, as necessary, to meet the needs of each individual served. (7-1-11)

**03. Psychotherapy Services.** The following psychotherapy services must be available through each agency and based on assessment(s) conducted by the professional qualified to deliver the service: (7-1-11)

**a.** Individual psychotherapy; (7-1-11)

**b.** Group psychotherapy in which there is a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and (7-1-11)

**c.** Family-centered psychotherapy that includes the participant and at least one (1) other family member at any given time. (7-1-11)

**d.** Psychotherapy services, ~~alone or in combination with supportive counseling,~~ are limited to a maximum of forty-five (45) hours in a calendar year, including individual, group, and family-centered. ~~(7-1-11)~~(7-1-11)T

**e.** Psychotherapy services must be provided by one (1) of the following qualified professionals: (7-1-11)

**i.** Licensed Psychiatrist; (7-1-11)

**ii.** Licensed Physician; (7-1-11)

- iii Licensed Psychologist; (7-1-11)
- iv. Licensed Clinical Social Worker; (7-1-11)
- v. Licensed Clinical Professional Counselor; (7-1-11)
- vi. Licensed Marriage and Family Therapist; (7-1-11)
- vii. Certified Psychiatric Nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree; (7-1-11)
- viii. Licensed Professional Counselor whose provision of psychotherapy is supervised by persons qualified above under Subsections 651.03.e.i. through 651.03.e.vii. of this rule; (7-1-11)
- ix. Registered Marriage and Family Therapist Intern whose provision of psychotherapy is supervised as described in Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (7-1-11)
- x. Licensed Masters Social Worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; or (7-1-11)
- xi. A Psychologist Extender, registered with the Bureau of Occupational Licenses, whose provision of psychotherapy is supervised as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (7-1-11)

**04. Occupational Therapy Services.** Occupational therapy services include individual occupational therapy and group occupational therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Occupational therapy services must be available and provided by a licensed occupational therapist and be based on the results of an occupational therapy assessment completed in accordance with Section 655 of these rules. (7-1-11)

**05. Physical Therapy Services.** Physical therapy services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Physical therapy services must be available and provided by a licensed physical therapist and be based on the results of a physical therapy assessment completed in accordance with Section 655 of these rules. (7-1-11)

**06. Speech-Language Pathology Services.** Speech-language pathology services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Speech-language pathology services must be available and provided by a qualified speech-language pathologist, as defined in these rules, and be based on the results of a speech and language assessment completed in accordance with Section 655 of these rules. (7-1-11)

**07. Optional Services.** DDAs may opt to provide any of the following services: pharmacological management, psychiatric diagnostic interviews, community crisis supports, ~~collateral contact~~, Intensive Behavioral Intervention (IBI), ~~and supportive counseling~~. All services must be provided by qualified individuals in accordance with the requirements in Section 657 of these rules. ~~(7-1-11)~~(7-1-11)T

**08. Pharmacological Management.** Pharmacological management is consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or other practitioner of the healing arts in direct face-to-face contact with the participant and be provided in accordance with the plan of service with the type, amount, frequency, and duration of the service specified. The telephoning of prescriptions to the pharmacy is not a billable service. (7-1-11)

**09. Psychiatric Diagnostic Interview.** A psychiatric diagnostic interview must include a history, a current mental status examination, and offer recommendations for treatment interventions needed, if any. If the interview exam results in a recommendation for additional intervention and the recommendation is accepted by the participant and his parent or legal guardian, if applicable, the recommendation must be incorporated into the



participant's plan of service with the type, amount, frequency, and duration of service specified. (7-1-11)

**a.** Physician Requirement. In order for a DDA to conduct a psychiatric diagnostic interview, the agency must have a physician on contract for the purpose of overseeing the services on the plan. (7-1-11)

**b.** On Plan of Service. A psychiatric diagnostic interview must be incorporated into the participant's plan of service. (7-1-11)

**c.** Staff Qualifications. A psychiatric diagnostic interview must be conducted by one (1) of the following professionals, in direct face-to-face contact with the participant: (7-1-11)

i. Psychiatrist; (7-1-11)

ii. Physician or other practitioner of the healing arts; (7-1-11)

iii. Psychologist; (7-1-11)

iv. Clinical social worker; or (7-1-11)

v. Clinical professional counselor. (7-1-11)

**10. Community Crisis Supports.** Community crisis supports are interventions for adult participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. DDAs that choose to provide these services must do so in accordance with Sections 507 through 515 of these rules. (7-1-11)

~~**H. Collateral Contact.** Collateral contact is consultation with or treatment direction given to a person with a primary relationship to a participant for the purpose of assisting the participant to live in the community. Collateral contact must be: (7-1-11)~~

~~**a.** Conducted by Agency Professionals. Be conducted by agency professionals qualified to deliver services and be necessary to gather and exchange information with individuals having a primary relationship to the participant. (7-1-11)~~

~~**b.** Face to Face or by Telephone. Be conducted either face to face or by telephone when telephone contact is the most expeditious and effective way to exchange information. Collateral contact does not include general staff training, general staffings, regularly scheduled parent teacher conferences, general parent education, or treatment team meetings, even when the parent is present. (7-1-11)~~

~~**c.** On the Plan of Service. Have a goal and objective stated on the plan of service that identifies the purpose and outcome of the service and is conducted only with individuals specifically identified on the plan of service. Program Implementation Plans are not required for collateral contact objectives. (7-1-11)~~

**121. Intensive Behavioral Intervention.** DDA's that choose to offer Intensive Behavioral Intervention (IBI) must provide IBI services in accordance with Sections 656 of these rules. (7-1-11)

**a.** IBI is limited to a lifetime limit of thirty-six (36) months. (7-1-11)

**b.** The DDA must receive prior authorization from the Department prior to delivering IBI services. (7-1-11)

**c.** IBI must only be delivered on an individualized, one-to-one (1 to 1) basis. (7-1-11)

**d.** Intensive behavioral intervention services will not be reimbursed if the participant is receiving psychosocial rehabilitation or partial care services as this is a duplication of services. (7-1-11)T

~~**de.** Established Developmental Therapy Program.~~ After July 1, 2006, agencies must have provided

developmental therapy for at least one (1) year and not be operating under a provisional certification prior to providing IBI services. ~~(7-1-11)~~(7-1-11)T

**ef.** *Exception.* Agencies that were providing IBI services prior to July 1, 2006, are exempt from the requirement under Subsection 651.12.d. of this rule. ~~(7-1-11)~~(7-1-11)T

**fg.** *IBI Consultation.* IBI consultation, as described in Section 656 of these rules, is included in the thirty-six (36) month IBI limitation. The DDA must receive prior authorization from the Department prior to providing IBI Consultation. ~~(7-1-11)~~(7-1-11)T

**13.** *Supportive Counseling.* ~~Supportive counseling must only be delivered on an individualized, one-to-one basis. Supportive counseling, alone or in combination with psychotherapy services, is limited to a maximum of forty-five (45) hours in a calendar year.~~ ~~(7-1-11)~~

**a.** *Psychological Assessment.* ~~The initial and ongoing need for the service of supportive counseling must be recommended in a current psychological assessment.~~ ~~(7-1-11)~~

**b.** *On Plan of Service.* ~~Supportive counseling must be provided in accordance with the requirements for the plan of service. The type, amount, frequency, and duration of this service must be specified on the plan of service.~~ ~~(7-1-11)~~

**e.** *Staff Qualifications.* ~~Supportive counseling must be provided by a professional listed under Subsection 651.03.e. of these rules or by a licensed social worker (LSW).~~ ~~(7-1-11)~~

**142.** **Excluded Services.** The following services are excluded for Medicaid payments: (7-1-11)

**a.** Vocational services; (7-1-11)

**b.** Educational services; and (7-1-11)

**c.** Recreational services. (7-1-11)

**153.** **Limitations on DDA Services.** ~~DDA~~ therapy services may not exceed the limitations as specified below. ~~(7-1-11)~~(7-1-11)T

**a.** The combination of therapy services listed in Subsections 651.02 through 651.06, ~~and 651.121, and 651.13~~ of this rule must not exceed twenty-two (22) hours per week. ~~(7-1-11)~~(7-1-11)T

**b.** Therapy services listed in Subsections 651.02 through 651.06, ~~and 651.121, and 651.13~~ of this rule, provided in combination with Community Supported Employment services under Subsection 703.04 of these rules, must not exceed forty (40) hours per week. ~~(7-1-11)~~(7-1-11)T

**c.** When an HCBS waiver participant under Sections 700 through 719 of these rules receives Adult Day Care as provided in Subsection 703.12 of these rules, the combination of Adult Day Care, Developmental Therapy and Occupational therapy must not exceed thirty (30) hours per week. (7-1-11)

**d.** Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No therapy services will be reimbursed during periods when the participant is being transported to and from the agency. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**655. DDA SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Assessment and Diagnostic Services.** ~~Twelve~~ **Four** (~~124~~) hours is the maximum Medicaid reimbursable time allowed for the combination of all assessment, evaluation, or diagnostic services provided in any calendar year. Psychological assessment benefits are separately limited to four (4) hours annually. Additional hours may be approved for a child through the month of his twenty-first birthday with approval from EPSDT staff in the Division of Medicaid. The following assessment and diagnostic services are reimbursable when provided in accordance with these rules: ~~(7-1-11)~~(7-1-11)T

**a.** Comprehensive Developmental Assessment; (7-1-11)

**b.** Comprehensive Intensive Behavioral Intervention (IBI) Assessment. Before conducting the comprehensive IBI assessment, the DDA must receive prior authorization from the Department. The time required to complete this assessment is included in the thirty-six (36) month IBI limitation but does not count against the ~~twelve~~ **four** (~~124~~) hour limitation described in Subsection 655.01 of this rule; ~~(7-1-11)~~(7-1-11)T

**c.** Occupational Therapy Assessment; (7-1-11)

**d.** Physical Therapy Assessment; (7-1-11)

**e.** Speech and Language Assessment; (7-1-11)

**f.** Medical/Social History; and (7-1-11)

**g.** Psychological Assessment. Includes psychological testing and psychiatric diagnostic interview. (7-1-11)

**02. Comprehensive Assessments Conducted by the DDA.** Assessments must be conducted by qualified professionals defined under Section 657 of these rules for the respective discipline or areas of service. (7-1-11)

**a.** Comprehensive Assessments. A comprehensive assessment must: (7-1-11)

**i.** Determine the necessity of the service; (7-1-11)

**ii.** Determine the participant's needs; (7-1-11)

**iii.** Guide treatment; (7-1-11)

**iv.** Identify the participant's current and relevant strengths, needs, and interests when these are applicable to the respective discipline; and (7-1-11)

**v.** For medical or psychiatric assessments, formulate a diagnosis. For psychological assessments, formulate a diagnosis and recommend the type of therapy necessary to address the participant's needs. For other types of assessments, recommend the type and amount of therapy necessary to address the participant's needs. (7-1-11)

**b.** Current Assessments Required. When the DDA determines developmental disabilities eligibility, current assessments must be completed or obtained as necessary. (7-1-11)

**c.** Date, Signature, and Credential Requirements. Assessments must be signed and dated by the professional completing the assessment and include the appropriate professional credential or qualification of that person. (7-1-11)

**d.** Assessment must be completed within forty-five (45) days. (7-1-11)

**i.** With the exception noted under Subsection 655.02.d.ii. of this rule, each assessment must be completed within forty-five (45) calendar days of the date it was recommended by the physician or other practitioner of the healing arts. If the assessment is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. (7-1-11)

ii. This forty-five (45) day requirement does not apply to participant plans of service authorized under Sections 507 through 515 of these rules. (7-1-11)

**03. Requirements for Current Assessments.** Assessments must accurately reflect the current status of the participant. (7-1-11)

a. ~~Current Assessments for Ongoing Services.~~ To be considered current, assessments must be completed or updated at least ~~annually~~ every two (2) years for service areas in which the participant is receiving services on an ongoing basis. ~~(7-1-11)~~(7-1-11)T

b. ~~Updated Assessments.~~ Assessments or updates are required in disciplines in which services are being delivered and when recommended by a professional. At the time of the required review of the assessment(s), the qualified professional in the respective discipline must determine whether a full assessment or an updated assessment is required for the purpose of reflecting the participant's current status in that service area. If, during the required review of the assessment(s), the latest assessment accurately represents the status of the participant, the file must contain documentation from the professional stating so. ~~(7-1-11)~~(7-1-11)T

c. ~~Medical/Social Histories and Medical Assessments.~~ Medical/social histories and medical assessments must be completed at a frequency determined by the recommendation of a professional qualified to conduct those assessments. ~~(7-1-11)~~(7-1-11)T

d. ~~Intelligence Quotient (IQ) Tests.~~ Once initial eligibility has been established, annual assessment of IQ is not required for persons whose categorical eligibility for DDA services is based on a diagnosis of mental retardation. IQ testing must be reconducted on a frequency determined and documented by the agency psychologist or at the request of the Department. ~~(7-1-11)~~(7-1-11)T

e. ~~Completion of Assessments.~~ Assessments must be completed or obtained prior to the delivery of therapy in each type of service. ~~(7-1-11)~~(7-1-11)T

f. ~~Psychological Assessment.~~ A current psychological assessment must be ~~completed or obtained~~ updated in accordance with Subsection 655.03.f. of these rules: ~~(7-1-11)~~(7-1-11)T

~~i. When the participant is receiving a behavior modifying drug(s); (7-1-11)~~

ii. Prior to the initiation of restrictive interventions to modify inappropriate behavior(s); (7-1-11)

~~iii. Prior to the initiation of supportive counseling; (7-1-11)~~

~~iv.~~ When it is necessary to determine eligibility for services or establish a diagnosis; (7-1-11)

~~viii.~~ When a participant has been diagnosed with mental illness; or (7-1-11)

~~ix.~~ When a child has been identified to have a severe emotional disturbance. (7-1-11)

**04. Assessments for Adults.** DDAs must obtain assessments required under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515 of these rules. All specific skill assessments must be conducted in accordance with Subsection 655.06 of these rules. (7-1-11)

**05. Types of Comprehensive Assessments.** (7-1-11)

a. Comprehensive Developmental Assessment. A comprehensive developmental assessment must be conducted by a qualified Development Specialist and reflect a person's developmental status in the following areas: (7-1-11)

i. Self-care; (7-1-11)

- ii. Receptive and expressive language; (7-1-11)
- iii. Learning; (7-1-11)
- iv. Gross and fine motor development; (7-1-11)
- v. Self-direction; (7-1-11)
- vi. Capacity for independent living; and (7-1-11)
- vii. Economic self-sufficiency. (7-1-11)
- b.** Comprehensive Intensive Behavioral Intervention (IBI) Assessment. The requirements for the comprehensive IBI assessment are found under Subsection 656.03 of these rules. (7-1-11)
- c.** Occupational Therapy Assessment. Occupational therapy assessments must be conducted by an occupational therapist qualified under Section 657 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the participant's needs. (7-1-11)
- d.** Physical Therapy Assessment. Physical therapy assessments must be conducted by a physical therapist qualified under Section 657 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the participant's needs. (7-1-11)
- e.** Speech and Language Assessment. Speech and language assessments must be conducted by a Speech-Language Pathologist who is qualified under Section 657 of these rules. (7-1-11)
- f.** Medical Assessments. Medical assessments must be completed by a physician or other practitioner of the healing arts who is qualified in accordance with Section 657 of these rules and accurately reflects the current status and needs of the person. (7-1-11)
- g.** Medical/Social History. Medical/social histories must be completed by a licensed social worker or other qualified professional working within the scope of his license. The medical/social history is a narrative report that must include: (7-1-11)
  - i. Medical history including age of onset of disability, prenatal and postnatal birth issues, other major medical issues, surgeries, and general current health information; (7-1-11)
  - ii. Developmental history including developmental milestones and developmental treatment interventions; (7-1-11)
  - iii. Personal history including social functioning/social relationships, recreational activities, hobbies, any legal and criminal history, and any history of abuse; (7-1-11)
  - iv. Family history including information about living or deceased parents and siblings, family medical history, relevant family cultural background, resources in the family for the participant; (7-1-11)
  - v. Educational history including any participation in special education; (7-1-11)
  - vi. Prevocational or vocational paid and unpaid work experiences; (7-1-11)
  - vii. Financial resources; and (7-1-11)
  - viii. Recommendation of services necessary to address the participant's needs. (7-1-11)
- h.** Hearing Assessment. A hearing assessment must be conducted by an audiologist who is qualified under Section 657 of these rules. (7-1-11)

**i.** Psychological Assessment. A psychological assessment includes psychological testing for diagnosis and assessment of personality, psychopathology, emotionality, or intellectual abilities (IQ test). The assessment must include a narrative report. Psychological assessment encompasses psychological testing and the psychiatric diagnostic interview. (7-1-11)

**j.** Psychological Testing. Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of a person's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses, or functional impairments. (7-1-11)

**i.** Psychological testing may be provided when in direct response to a specific assessment question. (7-1-11)

**ii.** The psychological report must contain the reason for the performance of this service. (7-1-11)

**iii.** Agency staff may deliver this service if they meet one (1) of the following qualifications: (7-1-11)

**(1)** Licensed Psychologist; (7-1-11)

**(2)** Psychologist Extender; or (7-1-11)

**(3)** A qualified therapist listed in Subsection 651.03.e. of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. (7-1-11)

**k.** Psychiatric Diagnostic Interview. A psychiatric diagnostic interview must be conducted in accordance with Subsection 651.09 of these rules. (7-1-11)

**06. Requirements for Specific Skill Assessments.** Specific skill assessments must: (7-1-11)

**a.** Further Assessment. Further assess an area of limitation or deficit identified on a comprehensive assessment. (7-1-11)

**b.** Related to a Goal. Be related to a goal on the IPP, ISP, or IFSP. (7-1-11)

**c.** Conducted by Qualified Professionals. Be conducted by qualified professionals for the respective disciplines as defined in this chapter. (7-1-11)

**d.** Determine a Participant's Skill Level. Be conducted for the purposes of determining a participant's skill level within a specific domain. (7-1-11)

**e.** Determine Baselines. Be used to determine baselines and develop the program implementation plan. (7-1-11)

**07. DDA Program Documentation Requirements.** Each DDA must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. (7-1-11)

**a.** General Requirements for Program Documentation. For each participant the following program documentation is required: (7-1-11)

**i.** Daily entry of all activities conducted toward meeting participant objectives. (7-1-11)

**ii.** Sufficient progress data to accurately assess the participant's progress toward each objective; and (7-1-11)

iii. A review of the data, and, when indicated, changes in the daily activities or specific implementation procedures by the qualified professional. The review must include the qualified professional's dated initials. (7-1-11)

iv. When a participant receives developmental therapy, documentation of six (6) month and annual reviews by the Developmental Specialist that includes a written description of the participant's progress toward the achievement of therapeutic goals, and the reason(s) why he continues to need services. (7-1-11)

**b.** Additional Requirements for Participants Eighteen Years or Older. For participant's eighteen (18) years of age or older, DDAs must also submit provider status reviews to the plan monitor in accordance with Sections 507 through 515 of these rules. (7-1-11)

**c.** Additional Requirements for Participants Seven Through Sixteen. For participants ages seven (7) through sixteen (16), the DDA must also document that the child has been referred to the local school district in accordance with the collaboration requirements in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (7-1-11)

**d.** Additional Requirements for Participants Birth to Three Years of Age. For participants birth to age three (3), the following are required in addition to those requirements in Subsection 654.01 of these rules: (7-1-11)

i. Documentation of the six (6) month and annual reviews; (7-1-11)

ii. Documentation of participation in transition planning at the IFSP developed closest to the child's second birthday to ensure service continuity and access to community services as early intervention services end at age three (3); (7-1-11)

iii. Documentation that participant rights have been met in accordance with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (7-1-11)

iv. Documentation of participation in the transition meeting with the school district; and (7-1-11)

v. Documentation of consultation with other service providers who are identified on the IFSP. (7-1-11)

**08. DDA Program Implementation Plan Requirements.** For each participant, the DDA must develop a Program Implementation Plan for each DDA objective included on the participant's required plan of service. All Program Implementation Plans must be related to a goal or objective on the participant's plan of service. The Program Implementation Plan must be written and implemented within fourteen (14) days after the first day of ongoing programming and be revised whenever participant needs change. If the Program Implementation Plan is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. The Program Implementation Plan must include the following requirements: (7-1-11)

**a.** Name. The participant's name. (7-1-11)

**b.** Baseline Statement. A baseline statement addressing the participant's skill level and abilities related to the specific skill to be learned. (7-1-11)

**c.** Objectives. Measurable, behaviorally-stated objectives that correspond to those goals or objectives previously identified on the required plan of service. (7-1-11)

**d.** Written Instructions to Staff. These instructions may include curriculum, interventions, task analyses, activity schedules, type and frequency of reinforcement, and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. (7-1-11)

**e.** Service Environments. Identification of the type of environment(s) where services will be provided. (7-1-11)

- f. Target Date. Target date for completion. (7-1-11)
- g. Results of the Psychological or Psychiatric Assessment. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to ensure therapies provided in the DDA accommodate the participant's mental health needs and to ensure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant's mental health status. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**658. GENERAL STAFFING REQUIREMENTS FOR AGENCIES.**

**01. Standards for Paraprofessionals Providing Developmental Therapy and IBI.** When a paraprofessional provides either developmental therapy or IBI, the agency must ensure adequate supervision by a qualified professional during its service hours. All paraprofessionals must meet the training requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410 and must meet the qualifications under Section 657 of these rules. A paraprofessional providing IBI must be supervised by an IBI professional; a paraprofessional providing developmental therapy must be supervised by a Developmental Specialist. Paraprofessionals providing developmental therapy to children birth to three (3) years of age must work under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. For paraprofessionals to provide developmental therapy or IBI in a DDA, the agency must adhere to the following standards: (7-1-11)

**a. Limits to Paraprofessional Activities.** The agency must ensure that paraprofessionals do not conduct participant assessments, establish a plan of service, develop a Program Implementation Plan, or conduct ~~collateral contact or~~ IBI consultation. These activities must be conducted by a professional qualified to provide the service. (7-1-11)(7-1-11)T

**b. Frequency of Supervision.** The agency must ensure that a professional qualified to provide the service must, for all paraprofessionals under his supervision, on a weekly basis or more often if necessary: (7-1-11)

- i. Give instructions; (7-1-11)
- ii. Review progress; and (7-1-11)
- iii. Provide training on the program(s) and procedures to be followed. (7-1-11)

**c. Professional Observation.** The agency must ensure that a professional qualified to provide the service must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional under his supervision, to ensure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). (7-1-11)

**d. Limitations to Service Provision by an IBI Paraprofessional.** IBI provided by a paraprofessional is limited to ninety percent (90%) of the direct intervention time, per individual participant. The remaining ten percent (10%) of the direct intervention time must be provided by the professional qualified to provide and direct the provision of IBI. (7-1-11)

**e. Additional Training Requirements for IBI Professionals and IBI Paraprofessionals.** Qualified IBI professionals and IBI paraprofessionals must complete and pass a Department-approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of IBI and ethical standards. Specifically, the curriculum must include: (7-1-11)

- i. Assessment of individuals; (7-1-11)



- ii. Behavioral management; (7-1-11)
- iii. Services or treatment of individuals; (7-1-11)
- iv. Supervised practical experience; and (7-1-11)
- v. Successful completion of a student project that includes an observation of demonstrated competencies for all individuals applying for initial certification or recertification after July 1, 2003. (7-1-11)

**f.** Continuing Training Requirements for IBI Professionals and IBI Paraprofessionals. Each IBI professional and IBI paraprofessional, in order to maintain certification, must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. (7-1-11)

i. The initial IBI certification training meets the yearly training requirement for the calendar year in which the IBI professional or paraprofessional was first certified. (7-1-11)

ii. If the individual has not completed the required training during any yearly training period, he may not provide IBI services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to any training-deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period. (7-1-11)

iii. An individual may remain IBI certified, despite being unable to bill for services, through two (2) consecutive annual training periods during which that individual has deficient training hours. A DDA may begin billing for the certified IBI Professional or Paraprofessional again after the required training hours are accumulated. (7-1-11)

iv. If an individual completes three (3) consecutive annual training periods without having accumulated sufficient training to satisfy the training requirement for the first of those periods, that individual's IBI certification is automatically rescinded and will no longer be recognized. To be recertified, the individual must retake the state IBI exam and complete the IBI Student Project, if not previously completed. (7-1-11)

**02. General Staffing Requirements for Agencies.** (7-1-11)

**a.** Administrative Staffing. Each DDA must have an agency administrator who is accountable for all service elements of the agency and who must be employed on a continuous and regularly scheduled basis. The agency administrator is accountable for the overall operations of the agency including ensuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program. (7-1-11)

i. When the administrator is not a Developmental Specialist as defined in these rules, the DDA must employ a Developmental Specialist on a continuous and regularly scheduled basis who is responsible for the service elements of the agency; and (7-1-11)

ii. The Developmental Specialist responsible for the service elements of the agency must have two (2) years of supervisory or management experience providing developmental disabilities services to individuals with developmental disabilities. (7-1-11)

**b.** Other required staffing. The agency must have available, at a minimum, the following personnel, qualified in accordance with Section 657 of these rules, as employees of the agency or through formal written agreement: (7-1-11)

- i. Speech-language pathologist or audiologist; (7-1-11)
- ii. Developmental Specialist; (7-1-11)

- iii. Occupational therapist; (7-1-11)
- iv. Physical therapist; (7-1-11)
- v. Psychologist; and (7-1-11)
- vi. Social worker, or other professional qualified to provide the required services under the scope of his license. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. ADULT DD WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Residential Habilitation.** Residential habilitation services which consist of an integrated array of individually-tailored services and supports furnished to eligible participants which are designed to assist them to reside successfully in their own homes, with their families, or alternate family homes. The services and supports that may be furnished consist of the following: (3-19-07)

**a.** Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

i. Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-19-07)

ii. Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

iii. Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (3-19-07)

iv. Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities which are merely diversional or recreational in nature); (3-19-07)

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (3-19-07)

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. (3-19-07)

**b.** Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. (3-19-07)

**c.** Skills training to teach waiver participants, family members, alternative family caregiver(s), or a

participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

**d.** Residential Habilitation services will not be reimbursed if a participant is receiving psychosocial rehabilitation or partial care services as this is a duplication of services. (7-1-11)T

**02. Chore Services.** Chore services which are heavy household maintenance and minor home repairs necessary to maintain the functional use of the home and to provide a clean, sanitary and safe environment. Chore activities include washing windows; moving heavy furniture and shoveling snow to provide safe access inside and outside the home; chopping wood when wood is the participant's primary source of heat; and tacking down loose rugs and flooring. These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer/agency or third party payer is capable of or responsible for their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-19-07)

**03. Respite.** Respite care services are those services provided on a short term basis because of the absence of persons normally providing non-paid care. Respite care services provided under this waiver will not include room and board payments. Respite care services are limited to participants who reside with non-paid caregivers. (3-19-07)

**04. Supported Employment.** Supported employment which is competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work. (3-19-07)

**a.** Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation will be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or IDEA. (3-19-07)

**b.** Federal Financial Participation (FFP) will not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-19-07)

**05. Transportation.** Transportation services which are services offered in order to enable waiver participants to gain access to waiver and other community services and resources required by the plan of service. This service is offered in addition to medical transportation required under 42 CFR 440.431.53 and transportation services offered under the State Plan, defined at 42 CFR 440.170(a), and must not replace them. Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge or public transit providers will be utilized. (3-19-07)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations which are those interior or exterior physical adaptations to the home, required by the waiver participant's plan of service, which are necessary to ensure the health, welfare, safety of the individual, or which enable the individual to function with greater independence in the home and without which, the waiver participant would require institutionalization. Such adaptations may include the installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. All services must be provided in accordance with applicable State or local building codes. Permanent environmental modifications are limited to modifications to a home rented or owned by

the participant or the participant's family when the home is the participant's principal residence. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)

**07. Specialized Equipment and Supplies.** Specialized medical equipment and supplies which include devices, controls, or appliances, specified in the plan of service which enable participants to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. They also include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. Items reimbursed with waiver funds must be in addition to any medical equipment and supplies furnished under the State Plan and must exclude those items which are not of direct medical or remedial benefit to the participant. All items must meet applicable standards of manufacture, design and installation. (3-19-07)

**08. Personal Emergency Response System.** Personal Emergency Response Systems (PERS) which may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical or environmental emergencies through the provision of communication connection systems. PERS are limited to participants who rent or own their home, who are alone for significant parts of the day, have no regular caretaker for extended periods of time and who would otherwise require extensive routine supervision. (3-19-07)

**09. Home Delivered Meals.** Home delivered meals which are designed to promote adequate wavier participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to participants who rent or own their own home, who are alone for significant parts of the day and have no regular caretaker for extended periods of time. (3-19-07)

**10. Skilled Nursing.** Nursing services are those intermittent nursing services or private duty nursing services which provide individual and continuous care listed in the plan of service which are within the scope of the Nurse Practice Act and are provided by a licensed professional (RN) nurse or licensed practical nurse (LPN) under the supervision of an RN, licensed to practice in Idaho. (3-19-07)

**11. Behavior Consultation/Crisis Management.** Behavior Consultation/Crisis Management services which provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

**12. Adult Day Care.** Adult Day Care is a supervised, structured day program, outside the home of the participant that offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. These activities need to be identified on the plan of service. Adult Day Care can not exceed thirty (30) hours per week either alone or in combination with developmental therapy, occupational therapy, or IBI. (3-19-07)

**a.** Services provided in a facility must meet the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (7-1-11)

**b.** Services provided in a home must meet the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Home," and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (7-1-11)

**13. Self Directed Community Supports.** Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, "Consumer Directed Services." (3-19-07)

**14. Place of Service Delivery.** Waiver services may be provided in the participant's personal residence, a certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: (3-19-07)

- a. Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)
- b. Licensed Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID); and (3-19-07)
- c. Residential Care or Assisted Living Facility. (3-19-07)
- d. Additional limitations to specific services are listed under that service definition. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. ADULT DD WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-19-07)

**01. Residential Habilitation -- Supported Living.** When ~~R~~residential habilitation services ~~must be~~ **are** provided by an agency, ~~that is~~ **the agency must be** certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and ~~is~~ **must be** capable of supervising the direct services provided. Individuals who provide residential habilitation services in their ~~own~~ home **of the participant (supported living)** must be **certified employed** by ~~the Department as a certified family home and must be affiliated with~~ a Residential Habilitation Agency. ~~The Residential Habilitation Agency provides oversight, training, and quality assurance to the certified family home provider. Individuals who provide residential habilitation services in the home of the participant (supported living), must be employed by a Residential Habilitation Agency.~~ Providers of residential habilitation services must meet the following requirements: (3-19-07)(7-1-11)T

- a. Direct service staff must meet the following minimum qualifications: (3-19-07)
  - i. Be at least eighteen (18) years of age; (3-19-07)
  - ii. Be a high school graduate or have a GED or demonstrate the ability to provide services according to an plan of service; (3-19-07)
  - iii. Have current CPR and First Aid certifications; (3-19-07)
  - iv. Be free from communicable diseases; (3-19-07)
  - v. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. Staff previously trained on assistance with medications by a licensed nurse but who have not completed this course must meet this requirement by July 1, 2007. (3-19-07)
  - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
  - vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. (3-19-07)
- b. All skill training for **agency** direct service staff must be provided by a Qualified Intellectual Disabilities Professional (QIDP) who has demonstrated experience in writing skill training programs. (3-19-07)(7-1-11)T

**c.** Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: ~~(3-19-07)~~(7-1-11)T

- i. Purpose and philosophy of services; (3-19-07)
- ii. Service rules; (3-19-07)
- iii. Policies and procedures; (3-19-07)
- iv. Proper conduct in relating to waiver participants; (3-19-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-19-07)
- vi. Participant rights; (3-19-07)
- vii. Methods of supervising participants; (3-19-07)
- viii. Working with individuals with developmental disabilities; and (3-19-07)
- ix. Training specific to the needs of the participant. (3-19-07)

**d.** Additional training requirements must be completed within six (6) months of employment ~~or~~ affiliation with the residential habilitation agency and include at a minimum: ~~(3-19-07)~~(7-1-11)T

- i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-19-07)
- ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-19-07)
- iii. Feeding; (3-19-07)
- iv. Communication; (3-19-07)
- v. Mobility; (3-19-07)
- vi. Activities of daily living; (3-19-07)
- vii. Body mechanics and lifting techniques; (3-19-07)
- viii. Housekeeping techniques; and (3-19-07)
- ix. Maintenance of a clean, safe, and healthy environment. (3-19-07)

**e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (3-19-07)

~~**f.** When residential habilitation services are provided in the provider's home, the provider's home must meet the requirements in IDAPA 16.03.19, "Rules Governing Certified Family Homes." Non-compliance with the certification process is cause for termination of the provider's provider agreement. (3-19-07)~~

**02. Residential Habilitation -- Certified Family Home (CFH).** (7-1-11)T

**a.** An individual who provides direct residential habilitation services in his own home must be certified by the Department to operate a certified family home under IDAPA 16.03.19, "Rules Governing Certified Family Homes," and must receive residential habilitation program coordination services provided through the Department, or its contractor, for the residential habilitation services he provides. (7-1-11)T

b. CFH providers providing residential habilitation services as a DD Waiver provider must meet the following minimum qualifications: (7-1-11)T

i. Be at least eighteen (18) years of age: (7-1-11)T

ii. Be a high school graduate, have a GED, or demonstrate the ability to provide services according to a plan of service: (7-1-11)T

iii. Have current CPR and First Aid certifications: (7-1-11)T

iv. Be free from communicable diseases: (7-1-11)T

v. Each CFH provider of residential habilitation services assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. (7-1-11)T

vi. CFH providers of residential habilitation services who provide direct care and services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks;" and (7-1-11)T

vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. (7-1-11)T

c. All skill training for CFH providers who are providing residential habilitation services must be provided through the Department or its contractor by qualified intellectual disabilities professional (OIDP) who has demonstrated experience in writing skill training programs. (7-1-11)T

d. Prior to delivering residential habilitation services to a participant, the CFH provider must complete an orientation training in the following areas as provided by either the Department, or its contractor or both, and include the following areas: (7-1-11)T

i. Purpose and philosophy of services: (7-1-11)T

ii. Service rules: (7-1-11)T

iii. Policies and procedures: (7-1-11)T

iv. Proper conduct in relating to waiver participants: (7-1-11)T

v. Handling of confidential and emergency situation that involve the waiver participant: (7-1-11)T

vi. Participant rights: (7-1-11)T

vii. Methods of supervising participants: (7-1-11)T

viii. Working with individuals with developmental disabilities; and (7-1-11)T

ix. Training specific to the needs of the participant. (7-1-11)T

e. Additional training requirements for CFH providers providing residential habilitation waiver services must be completed by the CFH provider within six (6) months of certification date and include a minimum of the following: (7-1-11)T

i. Instructional Techniques: Methodologies for training in a systematic and effective manner: (7-1-11)T

- ii. Managing behaviors: techniques and strategies for teaching adaptive behaviors: (7-1-11)T
- iii. Feeding: (7-1-11)T
- iv. Communication: (7-1-11)T
- v. Mobility: (7-1-11)T
- vi. Activities of daily living: (7-1-11)T
- vii. Body mechanics and lifting techniques: (7-1-11)T
- viii. Housekeeping techniques: and (7-1-11)T
- ix. Maintenance of a clean, safe, and healthy environment. (7-1-11)T
- f. The Department or its contractor will be responsible for providing on-going training to the CFH provider of residential habilitation specific to the needs of the participant as needed. (7-1-11)T

**023. Chore Services.** Providers of chore services must meet the following minimum qualifications: (3-19-07)

- a. Be skilled in the type of service to be provided; and (3-19-07)
- b. Demonstrate the ability to provide services according to a plan of service. (3-19-07)
- c. Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**034. Respite.** Providers of respite care services must meet the following minimum qualifications: (3-19-07)

- a. Meet the qualifications prescribed for the type of services to be rendered or must be an individual selected by the waiver participant, the family or his guardian; (3-19-07)
- b. Have received care giving instructions in the needs of the person who will be provided the service; (3-19-07)
- c. Demonstrate the ability to provide services according to an plan of service; (3-19-07)
- d. Have good communication and interpersonal skills and the ability to deal effectively, assertively and cooperatively with a variety of people; (3-19-07)
- e. Be willing to accept training and supervision by a provider agency or the primary caregiver of services; and (3-19-07)
- f. Be free of communicable diseases. (3-19-07)
- g. Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**045. Supported Employment.** Supported Employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background



check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**056. Transportation.** Providers of transportation services must: (3-19-07)

**a.** Possess a valid driver's license; and (3-19-07)

**b.** Possess valid vehicle insurance. (3-19-07)

**067. Environmental Accessibility Adaptations.** Environmental accessibility adaptations services must: (3-19-07)

**a.** Be done under a permit, if required; and (3-19-07)

**b.** Demonstrate that all modifications, improvements, or repairs are made in accordance with local and state housing and building codes. (3-19-07)

**078. Specialized Equipment and Supplies.** Specialized Equipment and Supplies purchased under this service must: (3-19-07)

**a.** Meet Underwriter's Laboratory, FDA, or Federal Communication Commission standards where applicable; and (3-19-07)

**b.** Be obtained or provided by authorized dealers of the specific product where applicable. This may include medical supply businesses or organizations that specialize in the design of the equipment. (3-19-07)

**089. Personal Emergency Response System.** Personal Emergency Response Systems (PERS) must demonstrate that the devices installed in waiver participants' homes meet Federal Communications Standards or Underwriter's Laboratory standards or equivalent standards. (3-19-07)

**0910. Home Delivered Meals.** Services of Home Delivered Meals under this Subsection may only be provided by an agency capable of supervising the direct service and must: (7-1-11)

**a.** Provide assurances that each meal meets one third (1/3) of the Recommended Dietary Allowance as defined by the Food and Nutrition Board of National Research Council or meet physician ordered individualized therapeutic diet requirement; (3-19-07)

**b.** Must provide assurances that the meals are delivered on time and demonstrate the ability to deliver meals at a minimum of three (3) days per week; (3-19-07)

**c.** Maintain documentation reflecting the meals delivered are nutritionally balanced and made from the highest U.S.D.A. Grade for each specific food served; (3-19-07)

**d.** Provide documentation of current driver's license for each driver; and (3-19-07)

**e.** Must be inspected and licensed as a food establishment by the District Health Department. (3-19-07)

**101. Skilled Nursing.** Nursing service providers must provide documentation of current Idaho licensure as a licensed professional nurse (RN) or licensed practical nurse (LPN) in good standing. (3-19-07)

**112. Behavior Consultation or Crisis Management.** Behavior Consultation or Crisis Management Providers must meet the following: (3-19-07)

**a.** Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (3-19-07)

- b. Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (3-19-07)
- c. Be a licensed pharmacist; or (3-19-07)
- d. Be a Qualified Intellectual Disabilities Professional (QIDP). (3-19-07)
- e. Emergency back-up providers must meet the minimum residential habilitation provider qualifications described under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-19-07)
- f. Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**123. Adult Day Care.** Providers of adult day care services must ~~be employed by or be affiliated with the residential habilitation agency that provides~~ notify the Department or its contractor for residential habilitation program coordination, for on behalf of the participant, if the service adult day care is provided in a certified family home other than the participant's primary residence. The adult day care provider must be capable of supervising direct services, provide services as identified on the plan of service, provide care and supervision identified on the participant's residential habilitation plan, and must meet the following minimum qualifications: ~~(3-19-07)~~(7-1-11)T

- a. Demonstrate the ability to communicate and deal effectively, assertively, and cooperatively with a variety of people; (3-19-07)
- b. Be a high school graduate, or have a GED or demonstrate the ability to provide services according to the plan of service; (3-19-07)
- c. Be free from communicable disease; (3-19-07)
- d. Adult day care providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; (4-2-08)
- e. Demonstrate knowledge of infection control methods; and (3-19-07)
- f. Agree to practice confidentiality in handling situations that involve waiver participants. (3-19-07)

**134. Service Supervision.** The plan of service which includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~724. SERVICE COORDINATION — ELIGIBILITY: INDIVIDUALS ELIGIBLE FOR PERSONAL ASSISTANCE SERVICES. (RESERVED)~~**

~~An individual is eligible to receive service coordination if he meets the following requirements in Subsections 724.01 and 724.02 of this rule. (5-8-09)~~

~~**01. Personal Care and Waiver Services.** Adults age eighteen (18) and older, who is eligible to receive state plan personal care services, or Aged and Disabled Home and Community Based Waiver Services. (5-8-09)~~

~~**02. Need Assistance.** Requires and chooses assistance to access services and supports necessary to maintain his independence in the community. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**727. SERVICE COORDINATION: COVERAGE AND LIMITATIONS.**

Service coordination consists of services provided to assist individuals in gaining access to needed medical, psychiatric, social, early intervention, educational, and other services. Service coordination includes the following activities described in Subsections 727.01 through 727.10 of this rule. (5-8-09)

**01. Plan Assessment and Periodic Reassessment.** Activities that are required to determine the participant's needs by development of a plan assessment and periodic reassessment as described in Section 730 of these rules. These activities include: (5-8-09)

- a.** Taking a participant's history; (5-8-09)
- b.** Identifying the participant's needs and completing related documentation; and (5-8-09)
- c.** Gathering information from other sources such as family members, medical providers, social workers, and educators, to form a complete assessment of the participant. (5-8-09)

**02. Development of the Plan.** Development and revision of a specific plan, described in Section 731 of these rules that includes information collected through the assessment and specifies goals and actions to address medical, psychiatric, social, early intervention, educational, and other services needed by the participant. The plan must be updated at least annually and as needed to meet the needs of the participant. (5-8-09)

**03. Referral and Related Activities.** Activities that help link the participant with medical, psychiatric, social, early intervention, educational providers or other programs and services that are capable of providing needed services to address identified needs and achieve goals specified in the service coordination plan. (5-8-09)

**04. Monitoring and Follow-Up Activities.** Monitoring and follow-up contacts that are necessary to ensure the plan is implemented and adequately addresses the participant's needs. These activities may be with the participant, family members, providers, or other entities or individuals and conducted as frequently as necessary. These activities must include at least one face-to-face contact with the participant at least every ninety (90) days, to determine whether the following conditions are met: (5-8-09)

- a.** Services are being provided according to the participant's plan; (5-8-09)
- b.** Services in the plan are adequate; and (5-8-09)
- c.** Whether there are changes in the needs or status of the participant, and if so, making necessary adjustments in the plan and service arrangements with providers. (5-8-09)

**05. Crisis Assistance.** Crisis assistance is service coordination used to assist a participant to access community resources in order to resolve a crisis. Crisis service coordination does not include crisis counseling, transportation to emergency service providers, or direct skill-building services. The need for all crisis assistance hours must meet the definition of crisis in Section 721 of these rules. (5-8-09)

**a.** Crisis Assistance for Children's Service Coordination. Crisis hours are not available until four and a half (4.5) hours of service coordination have already been provided in the month. Crisis hours for children's service coordination must be authorized by the Department. (5-8-09)

**b.** Crisis Assistance for Adults With a Developmental Disability. Crisis hours are not available until four and a half (4.5) hours of service coordination have already been provided in the month. Crisis assistance for adults with a developmental disability must be authorized by the Department and is based on community crisis supports as found in Section 507 through 515 of these rules. (5-8-09)

**c.** Crisis Assistance for Adults with Serious and Persistent Mental Illness. Initial crisis assistance is limited to a total of three (3) hours per calendar month. Additional crisis service coordination services must be

authorized by the Department and may be requested when the participant is at imminent risk of reinstitutionalization within fourteen (14) days following discharge from a hospital, institution, jail or nursing home, or meets the criteria listed in Subsection 727.05.c.i. through 727.05.c.iii. of this rule; (5-8-09)

i. The participant is experiencing symptoms of psychiatric decompensation that interferes or prohibits the participant from gaining or coordinating necessary services; (5-8-09)

ii. The participant has already received the maximum number of monthly hours of ongoing service coordination and crisis service coordination hours; and (5-8-09)

iii. No other crisis assistance services are available to the participant under other Medicaid mental health option services, including Psychosocial Rehabilitation Services (PSR). (5-8-09)

~~d. Crisis Assistance for Individuals Eligible for Personal Assistance Services. Crisis hours are not available until eight (8) hours of service coordination have already been provided in the month. Crisis hours must be authorized by the Department. (5-8-09)~~

~~ed.~~ Authorization for crisis assistance hours may be requested retroactively as a result of a crisis, defined in Section 721 of these rules, when a participant's service coordination benefits have been exhausted and no other means of support is available to the participant. In retroactive authorizations, the service coordinator must submit a request for crisis services to the Department within seventy-two (72) hours of providing the service. (5-8-09)

**06. Contacts for Assistance.** Service coordination may include contacts with non-eligible individuals only when the contact is directly related to identifying the needs and supports to help the participant access services. (5-8-09)

**07. Exclusions.** Service coordination does not include activities that are: (5-8-09)

a. An integral component of another covered Medicaid service; (5-8-09)

b. Integral to the administration of foster care programs; (5-8-09)

c. Integral to the administration of another non-medical program for which a participant may be eligible. This exclusion does not apply to case management provided as part of the individualized education program or individualized family service plan required by the Individuals with Disabilities Education Act. (5-8-09)

**08. Limitations on the Provision of Direct Services.** Providers of service coordination services may only provide both service coordination and direct services to the same Medicaid participant when the participant is receiving either children's service coordination or service coordination for adults with mental illness. The service coordination provider must document that the participant has made a free choice of service coordinators and direct service providers. (5-8-09)

**09. Limitations on Service Coordination.** Service coordination is limited to the following: (5-8-09)

a. Service Coordination for Persons with Mental Illness. Up to five (5) hours per month of ongoing service coordination for participants with mental illness. (5-8-09)

~~b. Service Coordination for Personal Assistance Services. Up to eight (8) hours per month for participants who are eligible to receive personal assistance services. (5-8-09)~~

~~eb.~~ Service Coordination for Children. Up to four and a half (4.5) hours per month for participants who meet the eligibility qualifications for Children's Service Coordination. (5-8-09)

~~ec.~~ Service Coordination for Adults with a Developmental Disability. Up to four and a half (4.5) hours per month for participants with developmental disabilities. (5-8-09)

**10. Limitations on Service Coordination Plan Assessment and Plan Development.** Reimbursement for the annual assessment and plan development cannot exceed six (6) hours annually for children, adult participants with mental illness, or adult ~~personal assistance~~ participants **diagnosed with developmental disabilities.** ~~Plan development for adult participants with developmental disabilities cannot exceed twelve (12) hours annually.~~  
(5-8-09)(7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**736. SERVICE COORDINATION: PROVIDER REIMBURSEMENT.**

**01. Duplication.** Participants are only eligible for one (1) type of service coordination. If they qualify for more than one (1) type, the participant must choose one (1). Service coordination payment must not duplicate payment made to public or private sector entities under other program authorities for this same purpose. (3-19-07)

**02. Payment for Service Coordination.** Subject to the service limitations in Subsection 736.06 of this rule, only the following services are reimbursable: (5-8-09)

- a.** Service coordination plan development defined in Section 721 of these rules. (5-8-09)
- b.** Face-to-face contact required in Subsection 728.07 of these rules. (5-8-09)
- c.** Two-way communication between the service coordinator and the participant, participant's service providers, family members, primary care givers, legal guardian, or other interested persons. (5-8-09)
- d.** Face-to-face contact between the service coordinator and the participant's family members, legal representative, primary caregivers, providers, or other interested persons. (3-19-07)
- e.** Referral and related activities associated with obtaining needed services as identified in the service coordination plan. (5-8-09)

**03. Service Coordination During Institutionalization.** Service coordination is reimbursable on the day a participant is admitted to a medical institution if the service is provided prior to admission. Service coordination is reimbursable on the day of discharge from a medical institution if the service is provided after discharge. (5-8-09)

- a.** Service coordination for reintegration into the community, can only be provided by and reimbursed to a service coordination agency when the following applies: (5-8-09)
  - i.** During the last fourteen (14) days of an inpatient stay which is less than one hundred eighty (180) days in duration; or (5-8-09)
  - ii.** During the last sixty (60) days of an inpatient stay of one hundred eighty (180) days or more. (5-8-09)
- b.** Service coordination providers may not file claims for reimbursement until the participant is discharged and using community services; (5-8-09)
- c.** Service coordination must not duplicate activities provided as part of admission or discharge planning activities of the medical institution. (5-8-09)

**04. Incarceration.** Service coordination is not reimbursable when the participant is incarcerated. (3-19-07)

**05. Services Delivered Prior to Assessment.** Payment for on-going service coordination will not be made prior to the completion of the service coordination plan. (5-8-09)

**06. Payment Limitations.** Reimbursement is not allowed for missed appointments, attempted contacts, travel to provide the service, leaving messages, scheduling appointments with the Medicaid service coordinator, transporting participants, or documenting services. (5-8-09)

**a.** Service coordination providers are paid in unit increments of fifteen (15) minutes each. A service coordinator can only be reimbursed for the amount of time worked and must not bill for more than four (4) billing units per hour. The following table is an example of minutes to billing units. (5-8-09)

Services Provided Are More Than Minutes	Services Provided Are Less Than Minutes	Billing Units
8	23	1
22	38	2
37	53	3
52	68	4
67	83	5
82	98	6
97	113	7

(5-8-09)

**b.** Direct delivery of medical, educational, psychiatric, social, early intervention, or other service to which a participant has been referred is not reimbursable as service coordination. (5-8-09)

**c.** Activities that are an integral component of another covered Medicaid service are not reimbursable as service coordination. (5-8-09)

**d.** Activities that are integral to the administration of foster care programs are not reimbursable as service coordination. (5-8-09)

**e.** Activities that are integral to the administration of another non-medical program are not reimbursable as service coordination. This exclusion does not apply to case management provided as part of the individualized education program or individualized family service plan required by the Individuals with Disabilities Education Act. (5-8-09)

**07. Healthy Connections.** A participant enrolled in Healthy Connection must receive a referral for assessment and provision of services from his Healthy Connections provider ~~unless he receives personal care services or aged and disabled waiver services.~~ To be reimbursed for service coordination, the Healthy Connections referral must cover the dates of service delivery. (5-8-09)(7-1-11)T

**08. Group Service Coordination.** Payment is not allowed for service coordination provided to a group of participants. (3-19-07)

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.13 - CONSUMER-DIRECTED SERVICES**

**DOCKET NO. 16-0313-1101**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 56-203, and, 56-250 through 56-257, Idaho Code; also House Bill 260 (2011) codified in Sections 56-255, 56-257, and 56-260 through 56-266, Idaho Code, as amended.

**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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule changes are being made to align the rules with House Bill 260 passed by the 2011 Legislature. In Section 56-255(3)(f), Idaho Code, as amended, the Department is directed to respond to requests for budget modifications only when health and safety issues are identified and meet the criteria as defined in rule.

The Department is refining the developmental disabilities individual budget modification process, and related requirements and criteria. This will enable the Department to respond to requests for individual developmental disabilities budget modifications only when health and safety issues are identified.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, in particular, House Bill 260 (2011).

**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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Self-Directed Services come under Developmental Disabilities Waiver Services found in IDAPA 16.03.10. The total estimated cost savings to the state general fund for these rule changes for SFY 2012 has already been included in the fiscal impact statement and the Department's appropriations for SFY 2012 in the PARF under Docket No. 16-0310-1105. (Specifically, it is included in the \$2,000,000 portion related to the budget for developmental disabilities services.)

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to bring this chapter of rules into compliance with House Bill 260 (2011).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Paige Grooms at (208) 947-3364.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 13th day of July, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0313-1101**

**000. LEGAL AUTHORITY.**

In accordance with Sections 56-202, 56-203, ~~and~~ Sections 56-250 through 257, ~~and Sections 56-260 through 56-266,~~ Idaho Code, the Idaho Legislature has authorized the Department of Health and Welfare to adopt and enforce rules for the provision of consumer-directed services. ~~(3-30-07)(7-1-11)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. Circle of Supports.** People who encourage and care about the participant and provide unpaid supports. (3-30-07)

**02. Community Support Worker.** An individual, agency, or vendor selected and paid by the participant to provide community support worker services. (3-30-07)

**03. Community Support Worker Services.** Community support worker services are those identified supports listed in Section 110 of these rules. (3-30-07)

**04. Consumer-Directed Community Supports (CDCS).** For the purposes of this chapter, consumer-directed supports include Self-Directed Community Supports (SDCS) and Family-Directed Community Supports (FDCS). (7-1-11)

**05. Family-Directed Community Supports (FDCS).** A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver and the Children's Home and Community Based Services State Plan Option described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**06. Financial Management Services (FMS).** Services provided by a fiscal employer agent that include: (3-29-10)

**a.** Financial guidance and support to the participant by tracking individual expenditures and monitoring overall budgets; (3-30-07)

**b.** Performing payroll services; and (3-30-07)



- c. Handling billing and employment related documentation responsibilities. (3-30-07)
- 07. Fiscal Employer Agent (FEA).** An agency that provides financial management services to participants who have chosen the CDCS option. The fiscal employer agent (FEA) is selected by the participant. The duties of the FEA are defined under Section 3504 of the Internal Revenue Code (26 USC 3504). (7-1-11)
- 08. Goods.** Tangible products or merchandise that are authorized on the support and spending plan. (3-30-07)
- 09. Guiding Principles for the CDCS Option.** Consumer-Directed Community Supports is based upon the concept of self-determination and has the following guiding principles: (7-1-11)
- a. Freedom for the participant to make choices and plan his own life; (3-30-07)
- b. Authority for the participant to control resources allocated to him to acquire needed supports; (3-30-07)
- c. Opportunity for the participant to choose his own supports; (3-30-07)
- d. Responsibility for the participant to make choices and take responsibility for the result of those choices; and (3-30-07)
- e. Shared responsibility between the participant and his community to help the participant become an involved and contributing member of that community. (3-30-07)
- 10. Participant.** A person eligible for and enrolled in the Consumer-Directed Services Programs. (7-1-11)
- 11. Readiness Review.** A review conducted by the Department to ensure that each fiscal employer agent is prepared to enter into and comply with the requirements of the provider agreement and this chapter of rules. (3-29-10)
- 12. Self-Directed Community Supports (SDCS).** A program option for adults eligible for the Adult Developmental Disabilities (DD) Waiver described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)
- 13. Support and Spending Plan.** A support and spending plan is a document that functions as a participant's plan of care when the participant is eligible for and has chosen a consumer-directed service option. This document identifies the goods or services, or both, selected by a participant, including those goods, services, and supports available outside of Medicaid-funded services that can help the participant meet desired goals, and the cost of each of the identified goods and services. The participant uses this document to manage his individualized budget. ~~(7-1-11)~~(7-1-11)T
- 14. Supports.** Services provided for a participant, or a person who provides a support service. A support service may be a paid service provided by a community support worker, or an unpaid service provided by a natural support, such as a family member, a friend, neighbor, or other volunteer. A person who provides a support service for pay is a paid support. A person who provides a volunteer support service is a natural support. (3-30-07)
- 15. Support Broker.** An individual who advocates on behalf of the participant and who is hired by the participant to provide support broker Services. (3-30-07)
- 16. Support Broker Services.** Services provided by a support broker to assist the participant with planning, negotiating, and budgeting. (3-30-07)
- 17. Traditional Adult DD Waiver Services.** A program option for participants eligible for the Adult Developmental Disabilities (DD) Waiver consisting of the specific Medicaid Enhanced Plan Benefits described in

IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**18. Traditional Children's DD Waiver Services.** A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**19. Traditional Children's HCBS State Plan Option Services.** A program option for children eligible for the Children's Home and Community-Based Services (HCBS) State Plan Option consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**20. Waiver Services.** A collective term that refers to services provided under a Medicaid Waiver program. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. UNPAID COMMUNITY SUPPORTS AND SERVICES.**

The Department requires that participants and their support broker identify and prioritize the use of any goods, services and supports available through an unpaid volunteer support or service, or those goods, services, and supports that can be provided by a natural support such as a family member, a friend, a neighbor or other volunteer. (7-1-11)T

**~~112.~~ -- 119. (RESERVED)**

**120. PARTICIPANT RESPONSIBILITIES.**

With the assistance of the support broker and the legal representative, if one exists, the participant is responsible for the following: (3-30-07)

**01. Guiding Principles.** Accepting and honoring the guiding principles for the CDCS option found in Section 010 of these rules. (7-1-11)

**02. Person-Centered Planning.** Participating in the person-centered planning process in order to identify and document paid and unpaid support and service needs, wants, and preferences. ~~(3-30-07)~~(7-1-11)T

**03. Rates.** Negotiating payment rates for all paid community supports he wants to purchase, ensuring rates negotiated for supports and services do not exceed the prevailing market rate, and that are cost-effective when comparing them to reasonable alternatives, and including the details in the employment agreements. ~~(3-30-07)~~(7-1-11)T

**04. Agreements.** Completing and implementing agreements for the fiscal employer agent, the support broker and community support workers and submitting the agreements to the fiscal employer agent. These agreements must be submitted on Department-approved forms. (3-30-07)

**05. Agreement Detail.** Ensuring that employment agreements specifically identify the type of support being purchased, the rate negotiated for the support, and the frequency and duration of the scheduled support or service. The participant is responsible for ensuring that each employment agreement: clearly identifies the qualifications needed to provide the support or service; includes a statement signed by the hired worker that he possesses the needed skills; and the signature of the participant that verifies the same. Additionally, each employment agreement will include statements that: the participant is the employer even though payment comes from a third party; employees are under the direction and control of the participant; and no employer-related claims will be filed against the Department. (3-30-07)

**06. Plan.** Developing a comprehensive support and spending plan based on the information gathered during the person-centered planning. (3-30-07)

**07. Time Sheets and Invoices.** Reviewing and verifying that supports being billed were provided and

indicating that he approves of the bill by signing the timesheet or invoice. (3-29-10)

**08. Quality Assurance and Improvement.** Providing feedback to the best of his ability regarding his satisfaction with the supports he receives and the performance of his workers. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**136. SUPPORT BROKER DUTIES AND RESPONSIBILITIES.**

**01. Support Broker Initial Documentation.** Prior to beginning employment for the participant, the support broker must complete the packet of information provided by the fiscal employer agent and submit it to the fiscal employer agent. This packet must include documentation of: (3-30-07)

**a.** Support broker application approval by the Department; (3-30-07)

**b.** A completed criminal history check, including clearance in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-30-07)

**c.** A completed employment agreement with the participant that identifies the specific tasks and services that are required of the support broker. The employment agreement must include the negotiated hourly rate for the support broker, and the type, frequency, and duration of services. The negotiated rate must not exceed the maximum hourly rate for support broker services established by the Department. (3-30-07)

**02. Required Support Broker Duties.** Support broker services may include only a few required tasks or may be provided as a comprehensive service package depending on the participant's needs and preferences. At a minimum, the support broker must: (3-30-07)

**a.** Participate in the person-centered planning process; (3-30-07)

**b.** Develop a written support and spending plan with the participant that includes the paid and unpaid supports that the participant needs and wants, related risks identified with the participant's wants and preferences, and a comprehensive risk plan for each potential risk that includes at least three (3) backup plans should a support fail. This plan must be authorized by the Department; ~~(3-30-07)~~(7-1-11)T

**c.** Assist the participant to monitor and review his budget; (3-30-07)

**d.** Submit documentation regarding the participant's satisfaction with identified supports as requested by the Department; (3-30-07)

**e.** Participate with Department quality assurance measures, as requested; (3-30-07)

**f.** Assist the participant to complete the annual re-determination process as needed, including updating the support and spending plan and submitting it to the Department for authorization; (3-30-07)

**g.** Assist the participant, as needed, to meet the participant responsibilities outlined in Section 120 of these rules and assist the participant, as needed, to protect his own health and safety; (7-1-11)

**h.** Complete the Department-approved criminal history check waiver form when a participant chooses to waive the criminal history check requirement for a community support worker. Completion of this form requires that the support broker provide education and counseling to the participant and his circle of support regarding the risks of waiving a criminal history check and assist with detailing the rationale for waiving the criminal history check and how health and safety will be protected; and (7-1-11)

**i.** Assist children enrolled in the Family-Directed Community Supports (FDCS) Option as they

transition to adult DD services. (7-1-11)

**03. Additional Support Broker Duties.** In addition to the required support broker duties, each support broker must be able to provide the following services when requested by the participant: (3-30-07)

- a.** Assist the participant to develop and maintain a circle of support; (3-30-07)
- b.** Help the participant learn and implement the skills needed to recruit, hire, and monitor community supports; (3-30-07)
- c.** Assist the participant to negotiate rates for paid community support workers; (3-30-07)
- d.** Maintain documentation of supports provided by each community support worker and participant's satisfaction with these supports; (3-30-07)
- e.** Assist the participant to monitor community supports; (3-30-07)
- f.** Assist the participant to resolve employment-related problems; and (3-30-07)
- g.** Assist the participant to identify and develop community resources to meet specific needs. (3-30-07)

**04. Termination of Support Broker Services.** If a support broker decides to end services with a participant, he must give the participant at least thirty (30) days' written notice prior to terminating services. The support broker must assist the participant to identify a new support broker and provide the participant and new support broker with a written service transition plan by the date of termination. The transition plan must include an updated support and spending plan that reflects current supports being received, details about the existing community support workers, and unmet needs. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. SUPPORT AND SPENDING PLAN DEVELOPMENT.**

**01. Support and Spending Plan Requirements.** The participant, with the help of his support broker, must develop a comprehensive support and spending plan based on the information gathered during the person-centered planning. The support and spending plan is not valid until authorized by the Department and must include the following: (3-30-07)

- a.** The participant's preferences and interests by identifying all the supports and services, both paid and non-paid, the participant wants and needs to live successfully in his community. (3-30-07)
- b.** Paid or non-paid consumer-directed community supports that focus on the participant's wants, needs, and goals in the following areas: (7-1-11)
  - i.** Personal health and safety including quality of life preferences; (3-30-07)
  - ii.** Securing and maintaining employment; (3-30-07)
  - iii.** Establishing and maintaining relationships with family, friends and others to build the participant's circle of supports; (3-30-07)
  - iv.** Learning and practicing ways to recognize and minimize interfering behaviors; and (3-30-07)
  - v.** Learning new skills or improving existing ones to accomplish set goals. (3-30-07)

- c. Support needs such as: (3-30-07)
  - i. Medical care and medicine; (3-30-07)
  - ii. Skilled care including therapies or nursing needs; (3-30-07)
  - iii. Community involvement; (3-30-07)
  - iv. Preferred living arrangements including possible roommate(s); and (3-30-07)
  - v. Response to emergencies including access to emergency assistance and care. This plan should reflect the wants, preferences, and needs of the whole person, regardless of payment source, if any. (3-30-07)
- d. Risks or safety concerns in relation to the identified support needs on the participant's plan. The plan must specify the supports or services needed to address the risks for each issue listed, with at least three (3) backup plans for each identified risk to implement in case the need arises; (3-30-07)
- e. Sources of payment for the listed supports and services, including the frequency, duration, and main task of the listed supports and services; and (3-30-07)
- f. The budgeted amounts planned in relation to the participant's needed supports. Community support worker employment agreements submitted to the fiscal employer agent must identify the negotiated rates agreed upon with each community support worker along with the specific support being purchased, the frequency and duration that the support will be provided, and the payment increment; that is, hourly or daily. The fiscal employer agent will compare and match the employment agreements to the appropriate support categories identified on the initial spending plan prior to processing time sheets or invoices for payment. (3-30-07)

**02. Support and Spending Plan Limitations.** Support and spending plan limitations include: (3-30-07)

- a. Traditional Medicaid waiver and traditional rehabilitative or habilitative services must not be purchased under the CDCS option. Because a participant cannot receive these traditional services and consumer-directed services at the same time, the participant, the support broker, and the Department must all work together to assure that there is no interruption of required services when moving between traditional services and the CDCS option; (7-1-11)
- b. Paid community supports must not be provided in a group setting with recipients of traditional Medicaid waiver, rehabilitative or habilitative services. This limitation does not preclude a participant who has selected the consumer-directed option from choosing to live with recipients of traditional Medicaid services; (7-1-11)
- c. All paid community supports must fit into one (1) or more types of community supports described in Section 110 of these rules. ~~Community supports that are not medically necessary or that do not minimize the participant's need for institutionalization must only be listed as non paid supports. Additionally, †~~The support and spending plan must not include supports or services that are illegal, that adversely affect the health and safety of the participant, that do harm, or that violate or infringe on the rights of others; ~~(3-30-07)~~(7-1-11)†
- d. Support and spending plans that exceed the approved budget amount will not be authorized; and (3-30-07)
- e. Time sheets or invoices that are submitted to the fiscal employer agent for payment that exceed the authorized support and spending plan amount will not be paid by the fiscal employer agent. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**190. INDIVIDUALIZED BUDGET.**

The Department sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, medical needs, and other individual factors related to the participant's assessed needs. Using these specific participant factors, the budget-setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. The participant must work within the identified budget and acknowledge that he understands the budget figure is a fixed amount. (3-29-10)

**01. Budget Amount Notification.** The Department notifies each participant of his set budget amount as part of the eligibility determination or annual redetermination process. The notification will include how the participant may appeal the set budget amount. ~~The notification will include how the participant may request to appeal the set budget amount determined by the Department.~~ (7-1-11)(7-1-11)T

**02. Annual Re-Evaluation of Adult Individualized Budgets.** Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's ~~individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget~~ condition that results in a need for services that meet medical necessity criteria, and that is not reflected on the current inventory of individual needs. (3-30-07)(7-1-11)T

**03. Annual Re-Evaluation of Children's Individualized Budgets.** Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's individualized needs diagnosis, or a change in the specific need is not reflected in the assessment. (7-1-11)T

**IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY**  
**19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY**  
**DOCKET NO. 19-0101-1101**  
**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 Sections 54-902, 54-912(2)(4), and 54-924(8)(11)(12), Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Thursday, August 11, 2011 - 9:00 a.m.**

**Idaho State Board of Dentistry  
350 N. 9th Suite M-100  
Boise, ID 83702**

The hearing site 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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of the proposed rule change is to:

1. Correct an unintended negative impact to licensees regarding continuing education requirements;
2. Delete an advertising standard which was ruled unconstitutional;
3. Change reference to documents incorporated by reference as professional standards;
4. Correct potential conflict in rules regarding dental hygienist rules of practice;
5. Clarify Board's role in approving dental assistant curriculum; and
6. General housekeeping changes.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

No fees or charges are imposed by this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed revisions are non-controversial.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Susan Miller, Idaho State Board of Dentistry, (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this first day of July, 2011.

Susan Miller, Executive Director  
Idaho State Board of Dentistry  
350 N. 9th St. Ste. M-100  
Boise, ID 83702  
Ph: (208) 334-2369  
Fax: (308) 334-3247

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1101**

**004. INCORPORATION BY REFERENCE (RULE 4).**

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

**01. ~~Documents~~ Professional Standards. (~~7-1-93~~)(    )**

**a.** American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 7th Edition, 2006. (4-7-11)

**b.** American Dental Association, Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, October 2007. (4-7-11)

**c.** American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)

**d.** American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)

**e.** Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

**f.** American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2009. (4-7-11)

**g.** American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), June 2009. (4-7-11)

**h.** American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. (4-7-11)

**i.** American Association of Dental Boards, the Dental Patient Record, June 12, 2009. (4-7-11)

**02. Availability.** These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720, ~~or the Idaho State Law Library, Supreme Court Building, 451 W. State Street, Boise, Idaho 83720.~~ (~~3-15-02~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**



**031. DENTAL HYGIENISTS - PROHIBITED PRACTICE (RULE 31).**

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, a dental hygienist may not perform certain specified duties. (4-6-05)

- 01. Prohibited Duties.** A dental hygienist is prohibited from performing the duties specified below: (4-6-05)
  - a.** Definitive diagnosis and dental treatment planning; (4-6-05)
  - b.** The operative preparation of teeth for the placement of restorative materials; (4-6-05)
  - c.** The placement or carving of restorative materials unless authorized by issuance of an extended access restorative license endorsement; (~~4-6-05~~)( )
  - d.** Administration of any general anesthesia, minimal sedation, or moderate sedation; (4-7-11)
  - e.** Final placement of any fixed or removable appliances; (4-6-05)
  - f.** Final removal of any fixed appliance; (4-6-05)
  - g.** Cutting procedures utilized in the preparation of the coronal or root portion of the tooth; (4-6-05)
  - h.** Cutting procedures involving the supportive structures of the tooth; (4-6-05)
  - i.** Placement of the final root canal filling; (4-6-05)
  - j.** Final impressions of any tissue-bearing area, whether hard or soft tissue; (4-6-05)
  - k.** Occlusal equilibration procedures for any prosthetic restoration, whether fixed or removable; (4-6-05)
  - l.** Final placement of prefabricated or cast restorations or crowns; and (4-6-05)
  - m.** Such other duties as specifically prohibited by the Board. (4-6-05)

**032. -- 034. (RESERVED)**

**035. DENTAL ASSISTANTS - PRACTICE (RULE 35).**

**01. Direct Supervision.** A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)

- a.** Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)
- b.** Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)
- c.** Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)
- d.** Expose and process radiographs; (4-6-05)
- e.** Take impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (4-6-05)
- f.** Record diagnostic bite registration; (4-6-05)

- g.** Record bite registration for fabrication of restorations; (4-6-05)
  - h.** Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)
  - i.** Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)
  - j.** Placement and removal of arch wire; (4-6-05)
  - k.** Placement and removal of orthodontic separators; (4-6-05)
  - l.** Placement and removal of ligature ties; (4-6-05)
  - m.** Cutting arch wires; (4-6-05)
  - n.** Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)
  - o.** Adjust arch wires; (4-6-05)
  - p.** Etching of teeth prior to placement of restorative materials; (4-6-05)
  - q.** Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)
  - r.** Placement and removal of rubber dam; (4-6-05)
  - s.** Placement and removal of matrices; (4-6-05)
  - t.** Placement and removal of periodontal pack; (4-6-05)
  - u.** Removal of sutures; (4-6-05)
  - v.** Application of cavity liners and bases; (4-6-05)
  - w.** Placement and removal of gingival retraction cord; (4-6-05)
  - x.** Application of topical fluoride agents; and (4-6-05)
  - y.** Performing such other duties as approved by the Board. (4-6-05)
- 02. Prohibited Duties.** Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)
- a.** Definitive diagnosis and treatment planning. (4-6-05)
  - b.** The placement or carving of permanent restorative materials in any manner. (7-1-93)
  - c.** Any procedure using lasers. (4-6-05)
  - d.** The administration of any general anesthetic, infiltration anesthetic or any injectable nerve block procedure. (4-6-05)
  - e.** Any oral prophylaxis. Oral prophylaxis is defined as the removal of plaque, calculus, and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing. (7-1-93)
  - f.** Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (4-6-05)

- g.** The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)
- i.** Fabrication and placement of temporary crowns; (4-6-05)
  - ii.** Perform the mechanical polishing of restorations; (7-1-93)
  - iii.** Initiating, regulating and monitoring the administration of nitrous oxide/oxygen to a patient; (4-7-11)
  - iv.** Application of pit and fissure sealants; (7-1-93)
  - v.** Coronal polishing, unless authorized by a Certificate of Registration; this refers to the technique of removing soft substances from the teeth with pumice or other such abrasive substances with a rubber cup or brush. This in no way authorizes the mechanical removal of calculus nor is it to be considered a complete oral prophylaxis. This technique (coronal polishing) would be applicable only after examination by a dentist and removal of calculus by a dentist or dental hygienist. (7-1-93)
  - vi.** Use of a high-speed handpiece restricted to the removal of orthodontic cement or resin. (4-6-05)

**03. Expanded Functions Qualifications.** A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.g. upon satisfactory completion of the following requirements: (4-6-05)

**a.** Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (4-6-05)

- i.** Current certification by the Dental Assisting National Board; or (7-1-93)
- ii.** Successful completion of a Board-approved ~~course~~ course curriculum in the fundamentals of dental assisting; or ~~(3-18-99)~~( )
- iii.** Successfully challenging the fundamentals course. (7-1-93)

**b.** Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

**04. Course Curriculum Approval.** Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its ~~courses of instruction~~ course curriculum in expanded functions. Before approving such ~~course~~ course curriculum, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. ~~(3-18-99)~~( )

**05. Other Credentials.** Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved courses curriculum, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s). ~~(3-18-99)~~( )

**036. -- 039. (RESERVED)**

**040. UNPROFESSIONAL CONDUCT (RULE 40).**

A dentist or hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to,

one (1) of the following: (7-1-93)

**01. Fraud.** Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

**02. Unlicensed Practice.** Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)

**03. Unlawful Practice.** Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)

**04. Dividing Fees.** A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)

**a.** The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)

**b.** The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)

**05. Controlled Substances.** Prescribing or administering controlled substances not reasonably necessary for, or within the scope of, providing dental services for a patient. In prescribing or administering controlled substances, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases. A dentist may not prescribe controlled substances for or administer controlled substances to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing controlled substances. (3-18-99)

**06. Harassment.** The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)

**07. Discipline in Other States.** Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)

**08. Altering Records.** Alter a patient's record with intent to deceive. (7-1-93)

**09. Office Conditions.** Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (7-1-93)

**10. Abandonment of Patients.** Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)

**11. Use of Intoxicants.** Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)

**12. Mental or Physical Illness.** Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)

**a.** Mental illness; (7-1-93)

- b. Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)
13. **Consent.** Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)
14. **Scope of Practice.** Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)
15. **Delegating Duties.** Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)
16. **Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)
17. **Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)
18. **Legal Compliance.** Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry or dental hygiene. ~~(3-30-07)~~(\_\_\_\_)
19. **Exploiting Patients.** Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)
20. **Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)
21. **Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)
22. **Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)
23. **Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)
24. ~~**American Dental Association Compliance**~~ **With Dentist Professional Standards.** Failure by a dentist to comply with ~~the American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code)~~ professional standards applicable to the practice of dentistry, as incorporated by reference in this chapter. ~~(3-20-04)~~(\_\_\_\_)
25. ~~**American Dental Hygienists' Association Compliance**~~ **With Dental Hygienist Professional Standards.** Failure by a dental hygienist to comply with ~~the American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code)~~ professional standards applicable to the practice of dental hygiene, as incorporated by reference in this chapter. ~~(4-6-05)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**046. ADVERTISING (RULE 46).**

Dentists and dental hygienists licensed to practice in Idaho may advertise in any medium or by other form of public

communication so long as any such advertising is not false, deceptive, misleading or not readily subject to verification. In addition to any other applicable grounds, a violation of this advertising rule shall constitute and be considered as unethical and unprofessional conduct pursuant to the Idaho Dental Practice Act and this chapter.

(3-20-04)

**01. General Advertising Provisions.**

(3-20-04)

**a.** “Advertisement” shall mean any public communication, made in any form or manner whatsoever, about a licensee’s professional services or qualifications for the purpose of soliciting business. “Advertising” or “advertise” shall mean holding out, broadcasting, mailing, publishing, transmitting, announcing, distributing or otherwise disseminating any advertisement, whether directly or indirectly through the efforts of another person or entity. Any sign soliciting business, whether at the location of the dental practice or otherwise, shall be considered as an advertisement. A licensee who engages or authorizes another person or entity to advertise for or on the licensee’s behalf is responsible for the content of the advertisement unless the licensee can prove that the content of the advertisement was contrary to the licensee’s specific directions.

(3-20-04)

**b.** If the form or manner of advertising consists of or contains verbal communication to the public by television, radio, or other means, the advertisement shall be prerecorded and approved for broadcast by the licensee and a recording of the actual advertisement shall be retained by the licensee for a period of two (2) years. Upon receipt of a written request from the Board, a licensee shall provide any such recorded advertisement to the Board within five (5) working days.

(3-20-04)

**c.** Any advertisement made under or by means of a fictitious or assumed business name or in the name of a professional service corporation shall be the responsibility of all licensees who are owners of the business or corporation.

(3-20-04)

**02. Prohibited Advertising.** A licensee shall not advertise in any form or manner which is false, misleading or deceptive to the public or which is not readily susceptible to verification. False, misleading or deceptive advertising or advertising that is not readily susceptible to verification includes, but is not limited to, advertising that:

(3-20-04)

**a.** Makes a material misrepresentation of fact or omits a material fact;

(3-20-04)

**b.** Makes a representation likely to create an unjustified expectation about the results of a dental procedure;

(3-20-04)

**c.** Compares a licensee’s services with another licensee’s services unless the comparison can be factually substantiated;

(3-20-04)

**d.** Makes a representation that is misleading as to the credentials, education, or the licensing status of a licensee;

(3-20-04)

**e.** Represents that the benefits of a dental insurance plan will be accepted as full payment when deductibles or copayments are required;

(3-20-04)

~~**f.** Makes a representation that is intended to take advantage of the fears or emotions of a particularly susceptible type of patient; and~~

~~(3-20-04)~~

**gf.** Refers to benefits of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products.

(3-20-04)

**03. Specialty Advertising.** The Board recognizes and licenses the following specialty areas of dental practice: Dental Public Health; Endodontics; Oral and Maxillofacial Pathology; Oral and Maxillofacial Radiology; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics. The specialty advertising rules are intended to allow the public to be informed about recognized dental specialties and specialization competencies of licensees and to require appropriate disclosures to avoid misperceptions on the part of the public.

(4-6-05)

a. An advertisement shall not state that a licensee is a specialist, or specializes in a recognized specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice unless the licensee has been issued a license ~~or certification~~ in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as “Endodontist,” “Pedodontist,” “Pediatric Dentist,” “Periodontist,” “Prosthodontist,” “Orthodontist,” “Oral and Maxillofacial Pathologist,” “Oral Pathologist,” “Oral and Maxillofacial Radiologist,” “Oral Radiologist,” “Oral and Maxillofacial Surgeon,” “Oral Surgeon,” “Specialist,” “Board Certified,” “Diplomate,” “Practice Limited To,” and “Limited To Specialty Of” shall be prima facie evidence that the licensee is announcing or holding himself out to the public as a specialist or that the licensee specializes in a recognized area of dental practice. (4-6-05)(      )

b. A licensee who has not been licensed ~~or certified~~ by the Board in a recognized specialty area of dental practice may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent disclaimer that the licensee is “licensed as a general dentist” or that the specialty services “will be provided by a general dentist.” Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-04)(      )

c. A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-04)

**047. -- 049. (RESERVED)**

**050. CONTINUING EDUCATION FOR DENTISTS (RULE 50).**

Effective October 1994, renewal of any active dental license will require evidence of completion of continuing education or volunteer dental practice that meets the following requirements. (4-6-05)

**01. Requirements:** (3-18-99)

a. All active dentists must hold a current CPR card. (7-1-93)

b. All active dentists shall acquire thirty (30) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. (3-30-07)(      )

c. Continuing education must be oral health/health-related for the professional development of a dentist. The thirty (30) credits shall be obtained through continuing education courses, correspondence courses, college credit courses, and viewing of videotape or listening to other media devoted to dental education. ~~Not more than eight (8) of the required credits shall be obtained through self-study.~~ (3-29-10)(      )

d. A dentist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)

e. Any person who becomes licensed as an active dentist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)

**02. Documentation.** In conjunction with license renewal, the dentist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)

**051. CONTINUING EDUCATION FOR DENTAL HYGIENISTS (RULE 51).**

Effective April 1994, renewal of any active dental hygiene license or dental hygiene license endorsement will require evidence of completion of continuing education or volunteer dental hygiene practice that meets the following requirements. (4-6-05)

- 01. Requirements for Renewal of an Active Status Dental Hygiene License:** (4-6-05)
- a.** All active dental hygienists must hold a current CPR card. (6-2-92)
- b.** All active dental hygienists shall acquire twenty-four (24) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. ~~(3-30-07)~~( )
- c.** Continuing education must be oral health/health-related education for the professional development of a dental hygienist. The twenty-four (24) credits shall be obtained through continuing education courses, correspondence courses, college credit courses, viewing of videotape or listening to other media devoted to dental hygiene education. ~~Not more than six (6) of the required credits shall be obtained through self-study.~~ ~~(3-29-10)~~( )
- d.** A dental hygienist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental hygiene practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)
- e.** Any person who becomes licensed as an active dental hygienist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)
- 02. Requirements for Renewal of an Extended Access Dental Hygiene License Endorsement.** In addition to any other continuing education requirements for renewal of a dental hygiene license, a person granted an extended access dental hygiene license endorsement shall complete twelve (12) credits of verifiable continuing education in each biennial renewal period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children. Any person who is issued an extended access dental hygiene license endorsement during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of those continuing education credits required under this section as specified by the Board. ~~(3-30-07)~~( )
- 03. Documentation.** In conjunction with license and endorsement renewal, the dental hygienist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental hygiene practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)



## IDAPA 23 - BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

#### DOCKET NO. 23-0101-1002

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1404(11), Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [June 1, 2011 Idaho Administrative Bulletin, Vol. 11-6, pages 35 through 37.](#)

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sandra Evans, M.A.Ed., R.N., Executive Director, at (208) 577-2482.

DATED this 24th day of June, 2011.

Sandra Evans, M.A.Ed., R.N., Executive Director  
Board of Nursing  
280 N. 8th St. (8th & Bannock), Ste. 210  
P. O. Box 83720  
Boise, ID 83720-0061  
Phone: (208) 577-2482  
Fax: (208) 334-3262

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#### DOCKET NO. 23-0101-1002 - ADOPTION OF PENDING RULE

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 11-6, June 1, 2011, pages 35 through 37.**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.**

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

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

#### **DOCKET NO. 24-0401-1101**

#### **NOTICE OF RULEMAKING - PROPOSED FEE 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 54-831, 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board of Cosmetology operates on fees paid by its licensees. This change would decrease the application fee, endorsement fee, original license fee, apprentice fee, and annual renewal fee for licensure.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

Rule 125 is being amended to reduce fees for original licenses, annual renewals and permits for all people and entities licensed pursuant to Title 54, Chapter 8, Idaho Code. Specifically this change would decrease original license fees and renewal fees for cosmetologists, nail technicians, estheticians, haircutters, and electrologists from \$20 to \$15; decrease cosmetology establishment, retail cosmetic dealers and glamour photography original licenses from \$50 to \$30; decrease cosmetology establishment, retail cosmetic dealers, and glamour photography renewals from \$35 to \$25; decrease cosmetology school original license from \$500 to \$400; decrease cosmetology school renewal from \$150 to \$75; decrease endorsement fee from \$100 to \$85; decrease apprentice fee from \$20 to \$15; and eliminate the \$10 fee for a temporary permit to demonstrate or teach.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

These fee changes would reduce the amount of fees collected for the Board of Cosmetology by approximately \$124,015 per year based on the number of licensees.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes were discussed in a noticed open meeting with interested parties in attendance.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W State Street  
PO Box 83720, Boise, ID 83720-0063  
Ph: (208) 334-3233; Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-0401-1101**

**125. FEES (RULE 125).**

Fees are established in accord with Section 54-818, Idaho Code, as follows: (7-1-97)

- 01. Original Permits, Licenses, and Annual Renewals.** (3-30-01)
  - a. Cosmetological establishment, original license - ~~Fifty thirty~~ dollars (~~\$530~~). (~~3-30-01~~)(    )
  - b. Cosmetological establishment, annual renewals - ~~Thirty twenty~~-five dollars (~~\$325~~). (~~3-18-99~~)(    )
  - c. Retail cosmetics Dealer, original license - ~~Fifty thirty~~ dollars (~~\$530~~). (~~3-30-01~~)(    )
  - d. Retail cosmetics dealer, annual renewals - ~~Thirty twenty~~-five dollars (~~\$325~~). (~~3-18-99~~)(    )
  - e. Makeover or glamour photography business, original license - ~~Fifty thirty~~ dollars (~~\$530~~). (~~3-30-01~~)(    )
  - f. Makeover or glamour photography business, annual renewals - ~~Thirty twenty~~-five dollars (~~\$325~~). (~~3-18-99~~)(    )
  - g. Domestic school of cosmetology, original license - ~~Five four~~ hundred dollars (~~\$5400~~). (~~3-30-01~~)(    )
  - h. Domestic school of cosmetology, annual renewals - ~~One hundred fifty seventy-five~~ dollars (~~\$15075~~). (~~7-1-97~~)(    )
  - i. Registered cosmetologist, original license/annual renewals - ~~Twenty fifteen~~ dollars (~~\$2015~~). (~~4-9-09~~)(    )
  - j. Nail technician, original license/annual renewals - ~~Twenty fifteen~~ dollars (~~\$2015~~). (~~4-9-09~~)(    )
  - k. Apprentice, original license (no renewal fees required) - ~~Twenty fifteen~~ dollars (~~\$2015~~). (~~7-1-97~~)(    )
  - l. Instructor, original license/annual renewals - ~~twenty-five~~ dollars (~~\$250~~). (~~4-9-09~~)(    )
  - m. Electrologist, original license/annual renewals - ~~Twenty fifteen~~ dollars (~~\$2015~~). (~~4-9-09~~)(    )
  - n. Esthetician, original license/annual renewals - ~~Twenty fifteen~~ dollars (~~\$2015~~). (~~4-9-09~~)(    )
  - o. Haircutter, original license/annual renewals - ~~Twenty fifteen~~ dollars (~~\$2015~~). (~~4-9-09~~)(    )
  - p. Endorsement fee - ~~One hundred eighty-five~~ dollars (~~\$10085~~). (~~3-30-01~~)(    )
  - q. ~~Temporary permit to demonstrate and teach - Ten dollars (\$10).~~ (~~3-30-01~~)
- 02. Examination Fees.** The fee for those examinations administered by a third party administrator shall be that fee determined by the administrator and shall be paid directly to the administrator by the applicant. (4-9-09)
- 03. Fees Shall Not Be Prorated or Returnable.** Fees shall not be prorated or returnable. (7-1-97)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY**

**DOCKET NO. 24-1001-1101**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1509, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2011 Legislature passed Senate Bill 1137 which eliminated the ballot process for appointment of board members. This rule change will eliminate the ballot process language in the rule to be consistent with the current statute.

**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 2011 Legislature passed Senate Bill 1137 which eliminated the ballot process for appointment of board members. This rule change will eliminate the ballot process language in the rule to be consistent with the current statute.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change is needed to be consistent with current statute.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

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 August 24, 2011.

DATED this 7th day of July, 2011.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
Boise, ID 83720-0063  
Ph: (208) 334-3233; Fax: (208) 334-3945

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 24-1001-1101

~~011.—099.~~      ~~(RESERVED)~~

~~100.      NOMINATIONS OF BOARD MEMBERS (RULE 100).~~

~~01.      Districts.~~ *In order to establish the districts from which a vacancy in the membership of the Board of Optometry shall be filled, the state is divided into the following three (3) districts by counties as follows:*

~~a.      North District.~~

<b>North District</b>	
<del>Lemhi</del>	<del>Latah</del>
<del>Boundary</del>	<del>Clearwater</del>
<del>Benner</del>	<del>Nez Perce</del>
<del>Kootenai</del>	<del>Valley</del>
<del>Shoshone</del>	<del>Idaho</del>
<del>Benewah</del>	<del>Adams</del>
<del>Lewis</del>	<del>Custer</del>
<del>Washington</del>	<del>Butte</del>
<del>Payette</del>	<del>Jefferson</del>
<del>Boise</del>	<del>Madison</del>
<del>Teton</del>	<del>Clark</del>
<del>Blaine</del>	<del>Fremont</del>

~~(7-1-97)~~

~~b.      Southwest District.~~

<b>Southwest District</b>	
<del>Ada</del>	<del>Gem</del>
<del>Owyhee</del>	<del>Canyon</del>
<del>Elmore</del>	

~~(7-1-97)~~

~~c.      Southeast District.~~

<b>Southeast District</b>	
<del>Bear Lake</del>	<del>Bonneville</del>
<del>Garibou</del>	<del>Camas</del>

<b>Southeast District</b>	
<i>Bannock</i>	<i>Lincoln</i>
<i>Franklin</i>	<i>Twin Falls</i>
<i>Oneida</i>	<i>Minidoka</i>
<i>Power</i>	<i>Bingham</i>
<i>Cassia</i>	<i>Gooding</i>
<i>Jerome</i>	

(7-1-99)

~~02- **Nomination Ballot.** Upon the occurrence of a vacancy to be filled as provided by law, a nominating ballot is to be forwarded to each licensed optometrist residing in the state of Idaho pursuant to Section 54-1504, Idaho Code, and shall read as follows:~~ (7-1-93)

**~~NOMINATING BALLOT FOR MEMBERS OF THE  
IDAHO STATE BOARD OF OPTOMETRY~~**

~~List below any number of names between one (1) and six (6) of persons you wish to nominate for appointment by the Governor to the Idaho State Board of Optometry. In order to be appointed by the Governor, a nominee must be a licensed optometrist in the state of Idaho and shall have been a resident of and lawfully practicing optometry within the State of Idaho for a period of at least five (5) years next preceding his appointment as required by Section 54-1505, Idaho Code. At least one (1) person appointed by the Governor must reside in each of the three (3) districts which are set as follows:~~

~~North District—Counties of Lemhi, Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah, Clearwater, Nez Perce, Idaho, Valley, Adams, Lewis, Washington, Jefferson, Payette, Madison, Boise, Teton, Custer, Blaine, Butte, Clark and Fremont.~~

~~Southwest District—Counties of Ada, Elmore, Gem, Canyon and Owyhee.~~

~~Southeast District—Counties of Bear Lake, Caribou, Bannock, Franklin, Oneida, Power, Cassia, Minidoka, Bonneville, Camas, Lincoln, Bingham, Gooding, Jerome, and Twin Falls.~~

~~MY NOMINATIONS ARE:~~

**~~READ CAREFULLY~~**

~~Instructions for return of the nominating ballot.~~

~~Do not sign or otherwise identify yourself on the foregoing ballot itself.~~

~~Do place the completed ballot in the envelope marked "Ballot," seal the ballot envelope, and sign and print your name on the outside of the envelope.~~

~~Do place the ballot envelope in an envelope addressed to Chief of the Occupational License Bureau, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702 on or before \_\_\_\_\_.~~

~~Ballot envelopes will first be verified to determine if the person returning the ballot is eligible to vote, the ballot envelope will be opened and the ballots themselves will be counted and the results tabulated and sent to the Governor as required by law. Ballot envelopes which cannot be verified will be set aside and the names listed therein not recorded.~~ (7-1-99)

~~1011.~~ -- 124. (RESERVED)

# **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

## **24.16.01 - RULES OF THE STATE BOARD OF DENTURITRY**

**DOCKET NO. 24-1601-1101**

### **NOTICE OF RULEMAKING - PROPOSED FEE 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 54-3309, 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The number of licensees under the State Board of Denturitry has been slowly declining over the past five years which has resulted in a decline in fees collected. The Board's expenses have been exceeding its annual fees. Increasing the renewal fee from \$600 to \$750 will help balance the Board's annual budget and maintain the services necessary to protect the health and safety of the public.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

Rule 250.04 is being amended to increase the annual renewal fee from \$600 to \$750. The anticipated impact is a total positive increase of \$3,150 to the dedicated fund based on 21 current licensees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no negative impact on general or dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change was discussed in a noticed open meeting.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State Street  
PO Box 83720  
Boise, ID 83720-0063  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1601-1101**

**250. FEES (RULE 250).**

The following fees are established by the board:

(7-1-93)

**01. License Application and Exam and Re-Examination Fee.**

(4-2-03)

**a.** License application and examination fee -- three hundred dollars (\$300).

(7-1-93)

**b.** License application and re-examination fee -- three hundred dollars (\$300).

(4-2-03)

**02. Intern Application and Permit Fee.** Intern application and permit fee -- three hundred dollars (\$300).

(7-1-93)

**03. Initial License Fee.** Initial license fee -- three hundred dollars (\$300).

(7-1-93)

**04. Annual Renewal Fee.** Annual renewal fee -- ~~six~~ seven hundred fifty dollars (~~\$60~~750). The annual renewal fee must be accompanied with certification of the applicant having met the required continued education set forth in Section 54-3313, Idaho Code, and Section 350. ~~(4-9-09)~~(    )

**05. Inactive License Fee.** The fee for a renewal of an inactive license shall be fifty dollars (\$50).

(3-10-00)



**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**  
**24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL**  
**CARE FACILITY ADMINISTRATORS**

**DOCKET NO. 24-1901-1101**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-4205, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2011 legislature passed House Bill 49 which revised the education and experience qualifications necessary for licensure as a Residential Care Facility Administrator. The bill also provided the Board discretion to accept other combinations of education and experience. This rule change implements the qualifications for licensure consistent with the statute. Rule 150 specifies the age, education and experience requirement, and the coursework and examination requirement.

**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 2011 legislature passed House Bill 49 which revised the education and experience qualifications necessary for licensure as a Residential Care Facility Administrator. The bill also provided the Board discretion to accept other combinations of education and experience. This rule change is necessary to implement the changes in statute.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule proposal was discussed in a noticed open meeting and implements changes to the Statute.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

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 August 24, 2011.

DATED this 7th day of July, 2011.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State Street  
PO Box 83720+  
Boise, ID 83720-0063  
Ph: (208) 334-3233  
Fax: (208) 334-3945

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 24-1901-1101**

**150. QUALIFICATIONS FOR ADMINISTRATOR LICENSE (RULE 150).**

Each applicant for an administrator's license ~~and each licensed administrator, as requested by the Board,~~ shall submit proof, along with their application, that said individual is at least twenty-one (21) years of age and meets all the following qualifications for the issuance of a license ~~or permit, or the retention or renewal of a license:~~

~~(4-6-05)~~(7-1-11)T

**01. Good Moral Character.** The applicant shall cause to be submitted a criminal background check by an entity approved by the Board establishing that the applicant has not been convicted, pled guilty or nolo contendere or received a withheld judgment for a felony or any crime involving dishonesty or the health or safety of a person.

(3-30-06)

**02. Education and Experience.** The applicant shall document one (1) of the combinations of education and experience in accordance with Section 54-4206, Idaho Code, and Subsection 400 of these rules.

(7-1-11)T

**03. Coursework.** The applicant shall document completion of a specialized course or program of study as set forth in Subsection 400 of these rules.

(7-1-11)T

**04. Examination.** The applicant shall submit proof of successful passage of a relevant examination as approved by the Board and defined in Subsection 300 of these rules.

(7-1-11)T

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.22.01 - RULES OF THE IDAHO STATE LIQUEFIED PETROLEUM GAS SAFETY BOARD

DOCKET NO. 24-2201-1101

#### 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 54-5310, 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Liquefied Petroleum Gas Safety Board is updating the edition of the document incorporated by reference entitled "Liquefied Petroleum Gas Code." Adopting the 2011 edition will ensure current safety standards in the dispensing and storage of propane.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes were discussed in a noticed open meeting.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Board is adopting the 2011 edition of the Liquefied Petroleum Gas Code published by the National Fire Protection Association (NFPA) to ensure current safety standards in the dispensing and storage of propane.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
PO Box 83720  
Boise, ID 83720-0063  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2201-1101**

**004. INCORPORATION BY REFERENCE (RULE 4).**

The document titled ~~*National Fire Protection Association Code 58*~~ Liquefied Petroleum Gas Code, 2004~~11~~ Edition, commonly known as NFPA 58, published by National Fire Protection Association (NFPA), is herein incorporated by reference and is available for public inspection at the Board's office. Copies of the 2011 Liquefied Petroleum Gas Code are available for purchase from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322.  
(4-2-08)( )

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.23.01 - RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD**

**DOCKET NO. 24-2301-1101**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2910, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2011 legislature passed House Bill 47 which amended Section 54-2918, Idaho Code, to provide for licensure by endorsement and educational equivalency. This new rule implements the statute and Rule 310 provides the qualifications for licensure by endorsement.

**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 2011 legislature passed House Bill 47 which amended Section 54-2918, Idaho Code, to provide for licensure by endorsement and educational equivalency. This new rule implements the statute and provides the qualifications for licensure by endorsement.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no impact to dedicated or general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule proposal was discussed in a noticed open meeting and implements changes to the Statute.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

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 August 24, 2011.

DATED this 7th day of July, 2011.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
PO Box 83720  
Boise, ID 83720-0063  
Phone: (208) 334-3233  
Fax: (208) 334-3945

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 24-2301-1101**

**301. -- ~~349.~~ (RESERVED)**

**310. ENDORSEMENT (RULE 310).**

The Board may grant a license to any person who submits a completed application on a form approved by the Board, together with the required fees, and who meets the following prerequisites: (7-1-11)T

**01. Holds a Current, Active License.** The applicant must hold a current, active license, at the level for which a license is being sought, issued by the authorized regulatory entity in another state, the certification of which must be received directly by the Board from the issuing agency. (7-1-11)T

**02. Discipline, Sanctions, or Voluntary Surrender of License.** The applicant must not have been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license. (7-1-11)T

**03. No Felony Conviction.** The applicant must not have been convicted of or found guilty of a felony, or received a withheld judgment or suspended sentence for any felony. (7-1-11)T

**04. Must Abide by Governing Laws and Rules.** The applicant must certify under oath to abide by the laws and rules governing the practice of Speech and Hearing Services in Idaho. (7-1-11)T

**310. -- 349. (RESERVED)**

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.25.01 - RULES OF THE IDAHO DRIVING BUSINESSES LICENSURE BOARD**

**DOCKET NO. 24-2501-1101**

#### **NOTICE OF RULEMAKING - PROPOSED FEE 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 54-5403, 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board of Driving Businesses was established in 2009. The Board's expenses have been exceeding the revenue brought in by fees. This change will help balance the Board's annual budget and maintain the services necessary to preserve the health and safety of the public.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

Rule 175.01 is being amended to increase the application fee from \$50 to \$75, the original instructor license and the annual renewal fee from \$50 to \$100, and the original business license fee and the annual renewal fee from \$500 to \$600. The anticipated impact is a total positive increase of \$9,750 to the dedicated fund based on 225 current licensees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no negative impact on general or dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes were discussed in a noticed open meeting.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
Boise, ID 83720-0063  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-2501-1101**

**175. FEES (RULE 175).**

- 01. Fees.** The following fees are established by the Board: (4-7-11)
- a.** Initial application processing fee - ~~fifty~~ **seventy-five** dollars (~~\$50~~**75**). (~~4-7-11~~)(    )
  - b.** Original instructor license fee and renewal fee - ~~fifty~~ **one hundred** dollars (~~\$50~~**100**). (~~4-7-11~~)(    )
  - c.** Instructor apprentice permit fee - fifty dollars (\$50). (4-7-11)
  - d.** Original business license fee and renewal fee - ~~five~~ **six** hundred dollars (~~\$5~~**6**00). (~~4-7-11~~)(    )
  - e.** Reinstatement fee - twenty-five dollars (\$25). (4-7-11)
- 02. Refund of Fees.** All fees are non-refundable. (4-7-11)



## IDAPA 27 - IDAHO STATE BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1101

#### NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that the Idaho State Board of Pharmacy (Board) intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 37-2715 and 54-171, Idaho Code.

**MEETING SCHEDULE:** A public meeting on the negotiated rulemaking will be held as follows:

**Tuesday, August 23rd, 2011, at 8:00 a.m.**

**Idaho State Capitol Building  
700 W. Jefferson St.  
Boise, ID**

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

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must do the following:

Written comments, addressed to the undersigned, will be accepted before and oral or written comments will be accepted during this open, public meeting of the Board, where the Board will consider all comment received and be available for discussion.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

In 2012, the Board expects to request that the Idaho State Legislature repeal IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," and promulgate a new, updated, comprehensive version.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES:** For assistance on technical questions concerning this negotiated rulemaking contact Mark Johnston, Executive Director, at (208)-334-2356 or [mark.johnston@bop.idaho.gov](mailto:mark.johnston@bop.idaho.gov).

An updated draft of the complete revision of 27.01.01, "Rules of the Idaho State Board of Pharmacy", can be found on the Board's web site at: <http://bop.accessidaho.org>.

DATED this 25th day of July, 2011.

Mark Johnston  
Executive Director  
Idaho State Board of Pharmacy  
3380 Americana Terrace, Ste #320  
PO Box 83720  
Boise, Idaho 83720  
Phone: (208) 334-2356  
Fax: (208) 334-3536

## IDAPA 30 - IDAHO COMMISSION FOR LIBRARIES

### 30.01.01 - RULES OF THE IDAHO COMMISSION FOR LIBRARIES GOVERNING THE USE OF COMMISSION SERVICES

DOCKET NO. 30-0101-1101

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 33-2503(2), Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [June 1, 2011 Idaho Administrative Bulletin, Vol. 11-6, pages 39 through 41.](#)

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Ann Joslin, State Librarian, at (208) 334-2150.

DATED this 24th day of June, 2011.

Ann Joslin  
State Librarian  
Idaho Commission for Libraries  
325 W. State St.  
P. O. Box 83720  
Boise, ID 83702  
Phone: (208) 334-2150  
Fax: (208) 334-4016

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#### DOCKET NO. 30-0101-1101 - ADOPTION OF PENDING RULE

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin,  
[Volume 11-6, June 1, 2011, pages 39 through 41.](#)**

**This rule has been adopted as a pending rule by the Agency and is now awaiting  
review and approval by the 2012 Idaho State Legislature for final adoption.**

## IDAPA 34 - SECRETARY OF STATE

### 34.05.01 - RULES GOVERNING FARM PRODUCTS CENTRAL FILING SYSTEM

DOCKET NO. 34-0501-1101

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-903(9), Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [June 1, 2011 Idaho Administrative Bulletin, Vol. 11-6, pages 42 through 48.](#)

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

DATED this 23rd day of June, 2011.

Jeff Harvey, UCC Supervisor  
Office of the Secretary of State  
450 N. 4th St.  
P. O. Box 83720  
Boise, ID 83720-0080  
Phone: (208) 332-2849  
Facsimile: (208) 334-2847

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#### DOCKET NO. 34-0501-1101 - ADOPTION OF PENDING RULE

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 11-6, June 1, 2011, pages 42 through 48.**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.**

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.03 - RULES GOVERNING VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS

DOCKET NO. 39-0203-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rule-making procedures have been initiated. The action is authorized pursuant to Section 49-201(1), Idaho Code, and Title 49, Chapter 16, Dealers and Salesmen Licensing (Vehicle Dealer Act).

**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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rule-making:

Provides criteria for record types and allows records to be retained physically or electronically. Allows for files to be stored off-site following 30-day notification to the department, with the provision that records must be produced within 3 business days upon request by the department. Requires that electronic records be searchable, be kept secure preventing unauthorized access, and in such a manner that they cannot be altered. It amends dated telephone criteria and revises sections 001 through 006 to meet requirements of the Office of the Administrative Rules Coordinator.

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

Senate Bill 1061, 2011, effective July 1, 2011, sponsored by the Idaho Automobile Dealers Association, authorized licensed Idaho dealers to store department required documentation in an electronic format or at a secure off-site location. The intent is to provide for better consumer protection of personal information. It was necessary to update the associated rule which defines principal place of business requirements for the record keeping systems required by the department for licensed vehicle dealers.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because action was initiated based on compliance with Legislative action with the passage of Senate Bill 1061, 2011.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No materials are being incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Amy Smith, Vehicle Services Manager, Division of Motor Vehicles, 334-8660.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 6th day of August, 2011.

Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State St, P O Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810 / FAX: 208-332-4107  
[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 39-0203-1101**

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.02.03, "Rules Governing Vehicle Dealer's Principal Place of Business." (7-1-11)T

**02. Scope.** This rule clarifies terms used in the definition of "principal place of business" and provisions regarding these terms. (~~12-26-90~~)(7-1-11)T

**002. WRITTEN INTERPRETATIONS.**  
There are no written interpretations for this chapter. (7-1-11)T

**003. ADMINISTRATIVE APPEALS.**  
Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-11)T

**004. INCORPORATION BY REFERENCE.**  
There are no documents incorporated by reference in this chapter. (7-1-11)T

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.**

**01. Street And Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. (7-1-11)T

**02. Office Hours.** Daily office hours are 8:00 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (7-1-11)T

**03. Telephone and Fax Numbers.** The central office may be contacted during office hours by phone at 208-334-8681 or by fax at 208-332-4183. (7-1-11)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**  
All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (7-1-11)T

~~007.~~ -- 009. (RESERVED)

**010. DEFINITIONS.**

**01. Vehicle Dealer File System.** Books, records and files, necessary to conduct the business of a vehicle dealership. In accordance with the Vehicle Dealer Act, records shall be securely kept in a file cabinet or desk drawer by the dealership in such order that they can be readily inspected by a Department Investigator. Such records and files may be kept electronically, as long as such records can be verified by the dealership as true and correct copies of the original records. Physical records or files retained by the dealership may be stored at an off-site location. The dealership must notify the department 30 days in advance of the address of the off-site location prior to moving such records. Records or files stored off-site must be made available to the department within 3 business days upon request. The files and records shall contain but are not limited to: ~~(12-26-90)~~(7-1-11)T

- a. Physical or electronic ~~S~~ales invoices for current and two (2) preceding years; ~~(12-26-90)~~(7-1-11)T
- b. Physical or electronic ~~C~~opies of purchase orders for vehicles purchased for current and two (2) preceding years; ~~(12-26-90)~~(7-1-11)T
- c. Physical or electronic copies of ~~F~~title application forms ~~kept~~ accessible in numerical order; ~~(12-26-90)~~(7-1-11)T
- d. Written or electronic records of vehicles bearing new or used dealers' number plates and their use by a manufacturer, vehicle dealer, or full-time licensed salespersons searchable by date, time or plate number; ~~(12-26-90)~~(7-1-11)T
- e. Written or electronic records for loaner plates searchable by date, time or plate number; ~~(12-26-90)~~(7-1-11)T
- f. A valid bond in the amount required by Section 49-1608, Idaho Code; (12-26-90)
- g. Copies or electronic records of Wholesale Dealer Forms records showing, all transactions, as applicable searchable by date or name of consignee; ~~(12-26-90)~~(7-1-11)T
- h. Physical or electronic ~~O~~dometer disclosure records for non-exempt vehicles; and ~~(12-26-90)~~(7-1-11)T
- i. Physical or electronic records of ~~C~~onsignment agreements, as specified in Section 49-1636, Idaho Code. ~~(7-2-92)~~(7-1-11)T
- j. A valid liability insurance policy as required by Section 49-1608A, Idaho Code. (7-1-11)T
- k. All electronic records must be created in a secure manner to prevent such records from being altered. Electronic copies of records must be legible, complete, and an accurate reproduction of the original business record. (7-1-11)T
- l. All electronic copies of records shall be supplemented with a back-up copy of the electronic records, either retained on-site or an off-site location, which permits the business record to be retrieved within three (3) business days. (7-1-11)T
- m. Any device, server, network device, or any internal or external storage medium which stores the electronic records must have security access controls and physical security measures to protect the records from unauthorized access, viewing, or alteration. (7-1-11)T
- n. Any dealer storing electronic or physical records that contain personal information shall ensure that disposal of any records shall be completed in a secure manner, by shredding, erasing, or otherwise modifying the personal information to make it unreadable or undecipherable through any means. (7-1-11)T

**02. Vehicle Dealer Sign Requirements.** An exterior sign permanently affixed to the land or building, with clearly visible letters, visible to major avenue of traffic meeting local building or zoning codes with the trade name of the dealership clearly visible is required. Wholesale dealer signs may be painted on the window of the office next to the entrance door of sufficient size to be easily read by prospective customers. A suggested retail sign size is

twenty-four (24) square feet, with a minimum of ~~two~~ **four** (24) inch letters.

~~(12-26-90)~~(7-1-11)T

**03. Telephone.** A ~~“hard-mount” wire line~~ **business** phone **which has a published business number, and listing in a local telephone directory in the name of the dealership. Business phones shall be** answered during **declared** business hours ~~or all other reasonable times~~, in the name of the licensed dealer. The telephone may be answered in person, by an answering machine, or at a remote location in person, ~~or by machine via call forwarding. All mobile telephones, including cellular, IMTS, trunking, or any telephone interconnect systems are specifically excluded. The telephone must be listed with the local telephone company in the name of the dealership.~~ **(7-2-92)**(7-1-11)T

**011. -- 099. (RESERVED)**

**100. GENERAL PROVISIONS.**

**01. File Physical or Electronic Records System Inspection.** A vehicle dealer shall **submit make available** all books, records and files **maintained at the dealership location** for immediate inspection for cause or complaint, ~~and upon reasonable written notice~~ **or within three (3) business days if records are stored at an approved off-site location** for random compliance review by a peace officer or authorized agent of the Department. **(7-2-92)**(7-1-11)T

**02. Title Fee Disclosure.** A dealer may reflect the payment of a state-required title fee as specified by Section 49-202(2)(b), Idaho Code, however: **(7-2-92)**

- a.** The fee must be clearly identified as a “TITLE FEE”; **(7-2-92)**
- b.** The fee must be shown as the exact amount required by law; **(7-2-92)**
- c.** Any documentation fees charged must be clearly listed separately from other fees and identified to the customer as dealer document preparation fees that are subject to sales tax as part of the purchase price of the vehicle. **(7-2-92)**

**03. Vehicle Dealer License Suspension.** Any dealer not meeting the requirements of the Vehicle Dealer Act shall be subject to suspension of an existing dealer license or refusal by the Department to issue a new dealer license. **(7-2-92)**

- a.** The Department’s agent shall give written notice of deficiencies to the dealer or applicant. **(12-26-90)**
- b.** At its discretion the Department may give the licensed dealership a reasonable amount of time to comply. **(12-26-90)**
- c.** Upon compliance, the license shall be reinstated or issued. **(12-26-90)**

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.47 - RULES GOVERNING REVOCATION OF VEHICLE REGISTRATION FOR FAILURE TO COMPLY WITH A MOTOR VEHICLE EMISSION INSPECTION ORDINANCE

#### DOCKET NO. 39-0247-1101 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making procedures. The action is authorized pursuant to Sections 49-201(1) and 49-202(12)(f), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

With passage of House Bill 326, 2011, which eliminated the requirement to forfeit and the need to repay registration fees when a registration is revoked for failure to comply with an emission test, this rule is no longer needed. All applicable language is now included in Section 39-116B, Idaho Code, making this rule unnecessary, and allowing it to be repealed in its entirety.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. There is no fee associated with the repeal of this rule.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: Other than the cost of publishing this rulemaking, there is no fiscal impact associated with this action.

**NEGOTIATED RULE-MAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rule-making was not conducted because there is no impact to the public or private sectors associated with the repeal of this administrative rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Amy Smith, Vehicle Services Manager, Division of Motor Vehicles, 334-8660.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State St, PO Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810 / FAX: 208-332-4107  
[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

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**IDAPA 39.02.47 IS BEING REPEALED IN ITS ENTIRETY**



## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.75 - RULES GOVERNING NAMES ON DRIVERS' LICENSES AND IDENTIFICATION CARDS

DOCKET NO. 39-0275-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rule-making procedures have been initiated. The action is authorized pursuant to Sections 49-201, 49-306, 49-315, 49-318, 49-319, and 49-2443, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rule-making:

This revision disallows issuance of a driver's license in one name and issuance of an identification card in another name, thereby preventing establishment of two identities. It also conforms to the one-person/one-record requirement for DMV Modernization and confers a customer benefit. The revision deletes the 26 character name limitation and provides for name formatting flexibility that aligns with current cultural practices and additional formatting procedures for long, complex names. This will clarify requirements for applicants, whose marital status has changed and provide for associated name changes. Name formatting conventions will be more clearly stated, more easily accommodated, and processed more quickly. Driver license examiners will have clearer guidelines for formatting requested name changes. It will also reduce the number of phone calls and faxes between ITD and county driver license examiners, improving efficiency.

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

All applicants for a driver's license or identification card and the people who serve them will enjoy a more clear and efficient process while the general public and businesses will benefit by reducing the number of persons who might abuse the system to establish multiple identities for personal gain.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Other than the cost to publish, there is no fiscal impact associated with this rulemaking.

**NEGOTIATED RULE-MAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Changes imposed by this rulemaking must meet specific guidelines and be compatible with other states.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No materials are being incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Lynn Rhodes, Driver's License Program Supervisor, Division of Motor Vehicles, 334-8727.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State St, P O Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810 / FAX: 208-332-4107  
[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 39-0275-1101**

**000. LEGAL AUTHORITY.**

Under the authority of Sections 49-201, 49-306, ~~49-314~~, 49-315, 49-318, 49-319, ~~49-336~~, and 49-2443, Idaho Code, the Department adopts the following rule. ~~(5-13-91)(7-1-11)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. OFFICE - OFFICE HOURS - MAILING AND STREET ADDRESS - PHONE NUMBERS.**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise ID 83707-1129. (4-2-08)

**02. Office Hours.** Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (4-2-08)

**03. Telephone and FAX numbers.** The central office may be contacted during office hours by phone at 208-334-8735000 or by fax at 208-334-8739586. ~~(4-2-08)(7-1-11)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. GENERAL PROVISIONS.**

**01. Punctuation Marks.** The only punctuation marks which may be used in a name are the comma (,), apostrophe ('), and the hyphen (-). A hyphen is allowed in the last name only, and may occur once. A comma can only be used between the last name and the first name. (4-2-08)

**02. Full Name Requirements.** ~~Only twenty-six (26) characters, including the spaces and punctuation, can be used in the entire full name on the actual driver's license or identification card.~~ If a full name has more ~~than twenty-six (26)~~ characters than the department automated system allows, the last name and first name must be written out fully. The middle name can be initialized and then the full middle name entered on the comment line of the application. If there is a designator, it will follow the middle initial. If the name ~~is~~ still has more ~~than twenty-six (26)~~ characters than the department automated system allows, the first and middle names can be initialized and the full first and middle names entered on the comment line of the application. ~~(5-13-91)(7-1-11)T~~

101. -- 199. (RESERVED)

200. CRITERIA.

**01. Legal Name.** The name on the certified original birth certificate will be used unless a name changes due to: ~~(5-13-91)~~(7-1-11)T

- a. Marriage; (5-13-91)
- b. Divorce; or (5-13-91)
- c. Court Order. (5-13-91)

**02. Stepparents' Name.** An applicant is not allowed to use a stepparent's last name, except by court order or other documents may be accepted to change a name, on approval by the Idaho Transportation Department. (7-1-96)

**03. Driver's License and Identification Card Names.** The name printed on the driver's license or identification card will be maintained in the Idaho Transportation Department records in the following order: (1) Last name, (2) First name, (3) Middle name, (4) Designator (if applicable (see Subsection 200.04)). An applicant may not have a driver's license and an identification card in different names. An applicant may add a middle name by providing a certified original copy of the applicant's: ~~(7-1-96)~~(7-1-11)T

- a. Birth Certificate; (7-1-11)T
- b. Court Order; or (7-1-11)T
- c. Divorce Decree. (7-1-11)T

**04. Designations of Names.** The designations of I, II, III, etc., will become first (1st), second (2nd), third (3rd), etc., and will appear after the middle name. The designators of JR and SR (no periods allowed) will be permitted and will appear after the middle name. The JR and SR designators will be permitted only if there is proof that the other individual exists, by way of an original certified copy of a birth certificate. (7-1-96)

**05. Married Applicant's Name.** (7-1-11)T

**a.** A married applicant is permitted to use the maiden name of the woman or surname of the man as the last name or as the middle name, or may hyphenate ~~both the~~ surnames and maiden name to form the last name. In no case under any of these stated options shall any applicant have more than one (1) hyphen in his or her last name. (7-1-11)T

**b.** When married applicants choose to use different hyphenated names or only one (1) applicant chooses to hyphenate his or her name, a woman will hyphenate her last name as "maiden-married" and a man will hyphenate his last name as "surname-maiden". (7-1-11)T

**c.** Married applicants who choose to have the same hyphenated last name may hyphenate their name as either "maiden-married" or "surname-maiden". (4-2-08)

**d.** Married applicants who already have hyphenated last names may: (7-1-11)T

**i.** Use the hyphenated name of the man or the hyphenated name of the woman; or (7-1-11)T

**ii.** Combine part of the hyphenated name of the man and part of the hyphenated name of the woman. (7-1-11)T

**e.** An applicant who is established in department records with a hyphenated last name due to marriage

and wants to drop the first part or the second part of the hyphenated name must provide, as required by the department, the following: (7-1-11)T

- i. A certified copy of a birth certificate; and/or (7-1-11)T
- ii. A certified copy of a marriage certificate; and/or (7-1-11)T
- iii. A certified copy of a divorce decree; and/or (7-1-11)T
- iv. A certified copy of a death certificate. (7-1-11)T

**06. Divorced Applicant's Name.** A divorced applicant who wants to use his or her original surname or maiden name, or a surname from a previous marriage, but does not have a divorce decree indicating the new name, is allowed to submit the following documents to the County Sheriff or the Idaho Transportation Department:  
(~~5-13-91~~)(7-1-11)T

- a. Original certified copy of the birth certificate showing the original maiden or surname; or  
(7-1-96)(7-1-11)T
- b. Original certified copies of the marriage license certificate and the divorce decree, as evidence to change the name; or.  
(7-1-96)(7-1-11)T
- ~~e. Original certified copies of the marriage license and divorce decree (only required for applicants wanting to use a surname from a former marriage).~~  
(7-1-96)

**07. Applicant's First Name.** An applicant is not allowed to change his or her first name except by court order. (5-13-91)

**08. Common Law Marriage.** Common law marriages created prior to January 1, 1996 will, for the purposes of this rule, be treated as a valid marriage. An affidavit of agreement is required which shall include:  
(7-1-96)

- a. The signatures of both the husband and the wife; (5-31-91)
- b. The date they became married under common law; and (5-13-91)
- c. Other documents verifying the marriage (subject to the approval of the Idaho Transportation Department). (5-13-91)

**09. Change of Name on Record.** Once a name is established in the Idaho Transportation Department records, a court order, marriage license, or divorce decree will be required to change the name and record. (~~An original certified copy of the document, which is dated after the date of record, will be required.~~) (7-1-96)(7-1-11)T

**10. Titles or Nicknames.** An applicant is not allowed to use titles or nicknames. (7-1-96)

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.01 - RULES GOVERNING DEFINITIONS REGARDING OVERLEGAL PERMITS

DOCKET NO. 39-0301-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rule-making procedures have been initiated. The action is authorized pursuant to Section 40-312, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rule-making:

This rule is being amended to correspond with changes made to 39.03.16, Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads, based in part on the passage of House Bill 228, 2011. This adds a definition for "Designated Agent," moves the definition of Escort Vehicle to Pilot Vehicle, increases the length limit for vehicle combinations from 105 ft to 115 ft under Extra Length, per Section 49-1010(7), Idaho Code, and adds a clarifying definition for Overall Length for enforcement personnel. Sections 000 through 006 have been updated to meet formatting requirements of the Office of Administrative Rules. Additionally, other definitions which have already been defined in code have been amended to reflect that code reference instead of duplicating the definition.

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

The passage of House Bill 228, 2011, expanded the exemptions associated with the transporting of implements of husbandry by an owner or their designated agent, which created a need to define "Designated Agent" which had not been done previously.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This rulemaking does not impose or increase a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking does not impose any fiscal impact on the state general fund.

**NEGOTIATED RULE-MAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted since change was necessary for compliance with legislative action and existing definitions in statute, and to update definitions to be consistent with industry standards.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials being incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, Division of Motor Vehicles, 334-8418.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

Linda L. Emry,  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State St, PO Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810 / FAX: 208-332-4107  
[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 39-0301-1101**

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.01, “Rules Governing Definitions Regarding Overlegal Permits”, IDAPA 39, Title 03, Chapter 01. (7-1-11)T

**02. Scope.** This rule gives the definitions for terms used in rules in Title 03 *dealing with highway matters* regarding overlegal permitting. (8-1-94)(7-1-11)T

**002. WRITTEN INTERPRETATIONS.**  
There are no written interpretations for this chapter. (7-1-11)T

**003. ADMINISTRATIVE APPEALS.**  
Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” (7-1-11)T

**004. INCORPORATION BY REFERENCE.**  
There are no documents incorporated by reference in this chapter. (7-1-11)T

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise, ID 83707-1129. (7-1-11)T

**02. Office Hours.** Daily office hours are 7:30 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (7-1-11)T

**03. Telephone and Fax Numbers.** The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. (7-1-11)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**  
All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (7-1-11)T

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. Accessories.** Additional parts of the single item load that have been removed to reduce width, length or height. (10-2-89)
- 02. Administrative Cost.** The government's cost of processing, issuing and enforcing a permit. (10-2-89)
- 03. Analysis.** A mathematical study of a vehicle or combination of vehicles and the stress they cause over bridges or specific sections of highways conducted by a professional engineer. (10-2-89)
- 04. Annual.** Twelve (12) consecutive months. (10-2-89)
- 05. Automobile Transporter.** ~~A vehicle combination constructed for the purpose of transporting vehicles~~ See Idaho Code 49-102. ~~(4-24-92)(7-1-11)T~~
- 06. Base Width.** The measurement below the eaves of a manufactured home, modular building or office trailer. (8-24-94)
- 07. Boat Transporter.** ~~Any vehicle combination designed and used specifically to transport assembled boats and boat hulls. Boats may be partially disassembled to facilitate transporting~~ See Idaho Code 49-103. ~~(9-14-92)(7-1-11)T~~
- 08. Cargo Unit.** A full truck, a semi-trailer, a full trailer, or a semi-trailer converted to a full trailer by means of a dolly or a converter gear mounting a fifth wheel. A dromedary tractor equipped with conventional fifth wheel, not stinger steered, shall be excluded from the definition of a cargo unit. (9-14-92)
- 09. Convoy.** A group of two (2) or more motor vehicles traveling together for protection or convenience. (8-24-94)
- 10. Department.** Idaho Transportation Department. (9-14-92)
- 11. Designated Agent.** An employee or relative of the farmer. (7-1-11)T
- 12. Dromedary Tractor.** ~~Every motor vehicle designed and used primarily for drawing a semitrailer and so constructed as to carry manifested cargo in addition to a part of the weight of the semitrailer~~ See Idaho Code 49-105. ~~(9-14-92)(7-1-11)T~~
- 123. Economic Hardship.** The loss of a substantial amount of money caused by economic changes. (9-14-92)
- 134. Emergency Movement.** A vehicle or vehicle combination hauling a load traveling to the site of an emergency for the purpose of aiding in eliminating the emergency. (9-14-92)
- 145. Escort Vehicle.** ~~Escort vehicles shall be passenger cars or light trucks equipped as specified in rule 39.03.12. Escort vehicles may be motorcycles except when utilized in lieu of adequate rearview mirrors as allowed for by Section 49-940, Idaho Code~~ See Pilot Vehicle. ~~(8-24-94)(7-1-11)T~~
- 156. Excess Weight.** Vehicle combinations hauling reducible loads operating on Interstate Routes with total gross loads exceeding eighty thousand (80,000) pounds but not to exceed twenty thousand (20,000) per single axle, thirty-four thousand (34,000) per tandem, not to exceed the weight limit for any group of two (2) or more consecutive axles established by Section 49-1001, Idaho Code, and not to exceed six hundred (600) pounds per inch width of tire for vehicles manufactured after July 1, 1987, or not to exceed eight hundred (800) pounds per inch width of tire for vehicles manufactured prior to that date as established by Section 49-1002, Idaho Code. (8-24-94)
- 167. Extra-Length.** Any vehicle combination in excess of the legal limits but not more than one hundred ~~five~~ fifteen (1015) feet as established in Section 49-1010, Idaho Code, which normally haul reducible loads. ~~(9-14-92)(7-1-11)T~~

**178. Extra-Ordinary Hazard.** Any situation where the traveling public's safety or the capacity of the highway system is endangered. (9-14-92)

**189. Farm Tractor.** ~~Every motor vehicle designed or adapted and used primarily as a farm implement power unit operated with or without other farm implements attached in any manner consistent with the structural design of that power unit~~ See Idaho Code 49-107. (9-14-92)(7-1-11)T

**190. Gross Vehicle Weight.** ~~The weight of a vehicle or combination of vehicles including the load thereon~~ See Idaho Code 49-108. (8-24-94)(7-1-11)T

**201. Heavily Loaded.** Exceeding legal weight or hauling a load which obstructs the driver's view. (9-14-92)

**212. Heavy Duty Wrecker Truck.** A motor vehicle designed and used primarily for towing disabled vehicles. (9-14-92)

**223. Height.** The total vertical dimension of a vehicle above the ground surface including any load and load-holding device thereon. (9-14-92)

**234. Implement of Husbandry.** ~~Every vehicle including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations when being incidentally operated. Such implements include, but are not limited to, combines, discs, dry and liquid fertilizer spreaders, harrows, hay balers, harvesting and stacking equipment, pesticide applicators, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. "Implement of husbandry" does not include semi-trailers, nor does it include motor vehicles or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations~~ See Idaho Code 49-110. (8-24-94)(7-1-11)T

**245. Incidentally Operated.** ~~Means the transport of the implement of husbandry from one (1) farm operation to another~~ See Idaho Code 49-110. (8-24-94)(7-1-11)T

**256. Legal.** In compliance with the Idaho Code on size and weight. (9-14-92)

**267. Length.** The total longitudinal dimension of a single vehicle, a trailer, or a semi-trailer. Length of a trailer or semi-trailer is measured from the front of the cargo-carrying unit to its rear, exclusive of all overhang and any appurtenances listed in [Rule IDAPA 39.03.06, "Rules Governing Allowable Vehicle Size"](#). (9-14-92)(7-1-11)T

**278. Light Truck.** ~~Every motor vehicle eight thousand (8,000) pounds gross weight or less which is designed, used or maintained primarily for the transportation of property~~ See Idaho Code 49-121. (8-24-94)(7-1-11)T

**289. Manufactured Home.** A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401 et seq. Similarly constructed vehicles used permanently or temporarily for offices, advertising, sales, display or promotion of merchandise or services are included in this definition. (8-24-94)

**290. Mobile Home.** A structure similar to a manufactured home, but built to a state mobile home code which existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code) dated June 15, 1975. (8-24-94)

**301. Modular Buildings.** A facility designed as a building or building section, the construction of



which is constructed to standards contained in the Uniform Building Code (UBC), adopted by Section 39-4109, Idaho Code. (8-24-94)

~~342.~~ **Non-Reducible.** A load that consists of a single piece (a machine and its accessories loaded separately is considered non-reducible also). (8-24-94)

~~323.~~ **Off-Tracking.** The difference in the path of the first inside front wheel and of the last inside rear wheel as a vehicle negotiates a curve. (8-24-94)

~~334.~~ **Office Trailer.** See definition of Manufactured Homes. (8-24-94)

~~345.~~ **Overall Combination Length.** The total length of a combination of vehicles, i.e. truck tractor-semitrailer-trailer combination, measured from front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer including the connecting tongue(s). (8-24-94)

~~36.~~ **Overall Length.** The total length of a combination of vehicles, i.e. truck tractor-semitrailer-trailer combination, measured from front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer including the connecting tongue(s) plus any load overhang. (7-1-11)T

~~357.~~ **Overdimensional.** Any vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. (8-24-94)

~~368.~~ **Overheight.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. (8-24-94)

~~379.~~ **Overlegal.** Any vehicle, vehicle combination or load which exceeds the limits established in Idaho Code. (8-24-94)

~~3840.~~ **Overlength.** Any load non-reducible in length being hauled or towed that is in excess of the limits established in Section 49-1010, Idaho Code. (8-24-94)

~~3941.~~ **Oversize.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. (8-24-94)

~~402.~~ **Overweight.** A single vehicle or a vehicle combination hauling or towing a non-reducible load whose weight is in excess of the limits established in Section 49-1001, Idaho Code. (8-24-94)

~~413.~~ **Overwidth.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. (8-24-94)

~~44.~~ **Pilot Vehicle.** Passenger cars or light trucks equipped as specified in IDAPA 39.03.12, "Rules Governing Safety Requirements of Overlegal Permits". (7-1-11)T

~~425.~~ **Reducible Load.** A single item or multiple items for transport which could reasonably be repositioned or physically altered so that the load conforms to legal size and weight dimensions. The determination of ability to reduce or reconfigure the load primarily depends on the intended disposition of the contents of the load upon delivery to its destination. (8-24-94)

~~436.~~ **Single Axle.** An assembly of two (2) or more wheels whose centers are in one (1) transverse vertical plane or may be included between two (2) parallel transverse planes forty (40) inches apart extending across the full width of the vehicle. (8-24-94)

~~447.~~ **Special Permit.** A document issued by the Idaho Transportation Department which authorizes the movement of vehicles or loads on the state highway system in excess of the sizes and weights allowed by Sections 49-1001, 49-1002 or 49-1010, Idaho Code. (8-24-94)

~~458.~~ **Steering Axle.** The axle or axles on the front of a motor vehicle that are activated by the operator to

directly accomplish guidance or steering of the motor vehicle and/or combination of vehicles. (8-24-94)

**469. Stinger-Steered.** A truck-tractor semi-trailer combination where the kingpin is located five (5) feet or more to the rear of the centroid of the rear axle(s). (8-24-94)

**4750. Tandem Axle.** Any two (2) axles whose centers are more than forty (40) inches but not more than ninety-six (96) inches apart and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles. (8-24-94)

**4851. Tridem Axle.** Any three (3) consecutive axles whose extreme centers are not more than one hundred forty-four (144) inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles. (8-24-94)

**4952. Variable Load Suspension Axle.** ~~Axles which can be regulated by the driver of the vehicle. These axles are controlled by hydraulic and air suspension systems, mechanically, or by a combination of these methods~~ See Idaho Code 49-123. ~~(8-24-94)(7-1-11)T~~

**503. Vocational Vehicle.** A vehicle specifically designed to enable the operator to perform specific tasks none of which are primarily for the purpose of transporting loads. Cranes, loaders, scrapers, motor graders, drill rigs are examples of vocational vehicles. (8-24-94)

**514. Width.** The total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding any appurtenances listed in Rule IDAPA 39.03.06, "Rules Governing Allowable Vehicle Size". ~~(8-24-94)(7-1-11)T~~

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.16 - RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE VEHICLES AND/OR LOADS

DOCKET NO. 39-0316-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rule-making procedures have been initiated. The action is authorized pursuant to Section 49-201, Idaho Code, and the provisions of Sections 49-1004 and 49-1010, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rule-making:

With the passage of House bill 228, 2011, it is necessary to update the farm exemptions listed in this rule for transporting implements of husbandry between farm operations and a repair/maintenance facility or a dealership/sales facility. Additional changes confer a benefit by allowing motor carriers to use the more widely accepted industry standard 10-foot wide trailer to haul a non-reducible load smaller than 10-feet wide on the trailer. We have also removed the 24-foot width restriction on the Interstate to reduce the impact on two-lane highways. The 10-minute limit on interruption of traffic has been deleted to eliminate any conflict with the traffic control plan provisions in IDAPA 39.03.11, "Rules Governing Overlegal Permittee Responsibility and Travel Restrictions". Section 100.05 of that rule requires that the permittee submit a traffic control plan prepared by a licensed engineer or certified traffic control supervisor when operating on two-lane highways and exceeding specified dimensions.

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

Compliance with statutory changes in House Bill 228, effective July 1, 2011, and conferring a benefit by allowing motor carriers to use the more widely accepted industry standard 10-foot wide trailer to haul a non-reducible load smaller than 10 feet wide on the trailer and removing the 24-foot width restriction on the Interstate to reduce the impact on two-lane highways.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking imposes no fiscal impact on the general fund.

**NEGOTIATED RULE-MAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rulemaking was initiated to comply with changes to Idaho Code in House Bill 228, 2011. Additional changes confer a benefit and eliminate conflict with another department rule.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, Motor Vehicle Division, 334-8418.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State St, PO Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810 / FAX: 208-332-4107  
[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 39-0316-1101**

**100. GENERAL OVERSIZE LIMITATIONS.**

**01. Maximum Dimensions Allowed.** The maximum dimensions of oversize vehicles or oversize loads shall depend on the character of the route to be traveled: width of roadway, alignment and sight distance, vertical or horizontal clearance, and traffic volume. ~~Overlegal permits will not normally be issued for movements which cannot allow for the passage of traffic as provided in IDAPA 39.03.11, "Rules Governing Overlegal Permittee Responsibility and Travel Restrictions," Subsection 100.05, except under special circumstances when an interruption of low volume traffic may be permitted (not to exceed ten (10) minutes) or when adequate detours are available. (4-5-00)(7-1-11)T~~

**02. Practical Minimum Dimension.** Oversize loads shall be reduced to a practical minimum dimension. Except as noted below, permits will not be issued to exceed legal size if the load is more than one (1) unit in width, length or height nor shall permits be utilized for multiple unit loads which may be reduced in number of units and positioned to meet legal dimensions established in Section 49-1010, Idaho Code. (8-25-94)

**03. Multiple Unit Overwidth Loads.** Multiple unit overwidth loads must be transported on legal dimension vehicles. Overwidth loads may be transported on double trailer combinations not exceeding seventy-five (75) feet combination length exclusive of load overhang. (4-2-08)

**04. Overwidth Overhang.** Over width loads shall distribute overhang to the sides of the trailer as evenly as possible. (8-25-94)

**101. -- 199. (RESERVED)**

**200. PERMITS FOR MULTIPLE-WIDTH OR MULTIPLE-HEIGHT LOADING.**

**01. Cylindrical Hay Bales.** Overlegal permits may be issued for overwidth transportation of cylindrical hay bales, produced by balers having bale chambers which may be five (5) feet or more in width. Such bales may be loaded two (2) bales wide and two (2) bales high. Hauling vehicles eligible for permit for this purpose shall be legal size vehicles registered for travel on public highways. Operation of such overwidth loads shall be subject to the same time of travel and other safety requirements as other overwidth loads having a similar width. This type of operation is intended as an option to the use of farm tractors hauling such loads on size-exempt implement of husbandry vehicles. Maximum width of such loads without tolerance may not exceed eleven (11) feet six (6) inches. (4-5-00)

**02. Reducible Height Loads.** Overlegal permits may be issued to allow the transportation of reducible loads in excess of fourteen (14) feet high but not in excess of fourteen (14) feet nine (9) inches high on designated highways. The vehicle height must not exceed fourteen (14) feet. A map listing the designated highways vertical clearances is available at the Idaho Transportation Department Permit Office and online at <http://www.itd.idaho.gov/dmv/poe/poe.htm>. ~~(4-5-00)(7-1-11)T~~

201. -- 299. (RESERVED)

**300. OVERWIDTH HAULING VEHICLES, RESTRICTIONS.**

**01. Width of Hauling Equipment.** Overlegal permits may be issued for ~~nine ten~~ (910) foot wide trailers hauling non-reducible loads smaller than ~~nine ten~~ (910) feet wide. Overlegal permits shall not be issued for trailers over ~~nine ten~~ (910) feet wide hauling any load on an overwidth vehicle unless such vehicle has been designed and constructed for the specific purpose of hauling a particular load the nature of which makes it impractical to be hauled on a legal width vehicle. The permit issued for oversize loads being hauled on oversize equipment will be valid for the unladen movement ~~or an incidental haul~~ and the laden movement, which shall not include commodities either to or from the point of loading or unloading of the oversize load. ~~The permittee is required to carry proof that the unladen movement or incidental haul is on the way to or from the point of loading or unloading of the oversize load.~~ ~~(3-20-04)(7-1-11)T~~

**02. Load Dimensions.** Any load exceeding the dimensions of the trailer shall be non-reducible in size, and any load exceeding legal allowable weight shall be non-reducible in weight. Annual permits issued for such ~~ten~~ (10) foot hauling vehicles shall be subject to the requirements and limitations of IDAPA 39.03.19, "Rules Governing Annual Overlegal Permits," and 39.03.13, "Rules Governing Overweight Permits," Section 200. ~~(4-5-00)(7-1-11)T~~

**03. Hauling Equipment in Excess of Ten Feet.** Special overwidth hauling vehicles exceeding ten (10) feet in width will be permitted, and may be required, in the hauling of excessively heavy loads to improve the lateral distribution of weight, or when a combination of weight, width, or height makes extra width in the hauling vehicle desirable in the public interest. The use of such vehicles more than ten (10) feet in width shall be restricted to loads requiring an overwidth hauling vehicle and the backhaul permit shall be for the unladen vehicle. (10-2-89)

**04. Buildings.** Buildings which are too wide to be safely transported on legal-width hauling vehicles shall be moved either on house moving dollies or on trailers which can be reduced to legal width for unladen travel. (10-2-89)

301. -- 399. (RESERVED)

**400. OVERWIDTH PERMITS FOR IMPLEMENTS OF HUSBANDRY.**

**01. Farm Tractors on Interstate Highways.** Farm tractors transported on Interstate Highways are required to have overlegal permit authority if width exceeds nine (9) feet. A farm tractor when attached to an implement of husbandry or when drawing an implement of husbandry shall be construed to be an implement of husbandry and is not required to have a permit. Farmers, equipment dealers or custom operators may be issued single trip or annual permits under this rule for transportation of farm tractors, having a width in excess of nine (9) feet to or from a farm involving Interstate Highway travel. The transportation of farm tractors or implements of husbandry for hire, or not being transported from one farm operation to another, is a common-carrier operation. Exemptions from legal width limitation do not apply to common-carrier operations. Farm tractors or implements of husbandry hauled for hire, or used in the furtherance of a business (not to include farming operations), are subject to the same overlegal permit regulations as other oversize loads when the width of the load exceeds legal-width limitations, and must operate under oversize permits. (3-30-01)

**02. Other Than Farm to Farm.** Implements of husbandry exceeding eight (8) feet six (6) inches in width being transported other than from one (1) farm operation to another farm operation shall require overlegal permits ~~authority~~ except when the farmer or their designated agent is transporting implements of husbandry and equipment for the purpose of: ~~(4-5-00)(7-1-11)T~~

**a.** The repair or maintenance of such implements of husbandry and equipment when traveling between a farm and a repair or maintenance facility during daylight hours; or (7-1-11)T

**b.** The purchase or sale of such implements of husbandry or equipment when traveling between a farm and a dealership, auction house, or other facility during daylight hours. (7-1-11)T

**03. Farm Permits.** Single trip permits must be ordered at the permit office and the operator may post a security bond to establish credit (See IDAPA 39.03.21, "Rules Governing Special Overlegal Permit Fees," Section 300) and thereby qualify to complete an application form, call the overlegal permit office for a permit number, and carry the application form with the overwidth vehicle in lieu of the overlegal permit form. Under provisions of IDAPA 39.03.19, "Rules Governing Annual Overlegal Permits," Section 100, annual permits will be issued to towing units or to self-propelled farm tractors or towed units, or blanket permits may be issued to an Idaho domicile applicant without vehicle identification. Such blanket permits may be transferred from one vehicle to another vehicle but shall be valid only when the permit is with the overwidth vehicle and/or load. A photocopy of the permit is valid provided that the Pilot/Escort Vehicle and Travel Time Requirements Map and Vertical Clearance of Structures Map furnished by the Idaho Transportation Department are included. Such annual permits for implements of husbandry or farm tractors are subject to the same maximum dimensions, travel time exclusions and safety requirements as other overwidth annual permits and are valid for continuous travel for twelve (12) consecutive months. (4-5-00)(7-1-11)T

**04. Overwidth Farm Trailers.** Trailers or semi-trailers exceeding eight feet six inches (8' 6") wide, but not wider than the implement of husbandry, used for the transportation of implements of husbandry from a farm to a farm for agricultural operations, shall be exempt from overlegal permitting requirements. This exemption does not apply to trailers or semi-trailers used in common carrier operations, hauling for hire or used in the furtherance of a business (not to include farming operations). (3-20-04)

**a.** Exempt trailers, as listed above, may not be used to haul implements of husbandry that are narrower than the overwidth trailer. (3-20-04)

**b.** Empty trailers, as listed above, being used to pick up or drop off an implement of husbandry from a farm to a farm are also exempt and must be reduced to a practical minimum dimension (i.e. dropping side extensions). (3-20-04)

**c.** Exempt trailers, as listed above, may not be used to transport loads other than implements of husbandry from a farm to a farm. (3-20-04)

**401. -- 499. (RESERVED)**

**500. ADDITIONAL DISTRICT APPROVAL AND ALLOWANCE FOR APPROVAL TIME.**

District approval is required when vehicles or loads exceed: sixteen (16) feet wide on red coded routes, eighteen (18) feet wide on black coded routes and interstate highways ~~with no loads over twenty-four (24) feet wide allowed on interstate highways~~, sixteen (16) feet high on any route, and one hundred twenty (120) feet long on any route. District approval will be obtained by the Overlegal Permit office and may require up to twenty-four (24) working hours. See Pilot/Escort Vehicle and Travel Time Requirements Map for color coded routes online at <http://www.itd.idaho.gov/dmv/poe/poe.htm>. (4-5-00)(7-1-11)T

**IDAPA 45 - HUMAN RIGHTS COMMISSION**  
**45.01.01 - RULES OF THE IDAHO HUMAN RIGHTS COMMISSION**  
**DOCKET NO. 45-0101-1101**  
**NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is May 24, 2011.

**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 Sections 67-5906(12) and 44-1703(2), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rule has been adopted to delete definitions of “mental condition,” “physical condition,” “record of such a disability,” “regarded as having such a disability,” and “substantial limitations.” This will ensure that state law on disability discrimination will be interpreted in compliance with the Americans with Disabilities Act and federal regulations, as established by Idaho Supreme Court decisions.

**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:

It is necessary to bring the rules of the Commission into compliance with changes in federal regulations regarding disability discrimination, which became effective on May 24, 2011.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Deputy Attorney General Jeanne T. Goodenough, 317 West Main Street, Boise, Idaho 83735-0660. Phone: (208) 334 2873 ext. 4229. Email: [jeanne.goodenough@labor.idaho.gov](mailto:jeanne.goodenough@labor.idaho.gov).

DATED this 29th day of June, 2011.

Jeanne T. Goodenough  
Deputy Attorney General  
Idaho Human Rights Commission  
317 West Main Street  
Boise, ID 83735-0660  
(208) 334 2873; FAX (208) 334 6125

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**THE FOLLOWING IS THE TEMPORARY TEXT OF DOCKET NO. 45-0101-1101**

**010. DEFINITIONS.**

- 01. Administrator.** The Administrator appointed by the Commission pursuant to the Human Rights Act. (7-1-93)
- 02. Commission.** The Idaho Human Rights Commission as created by the Human Rights Act. (7-1-93)

- 03. Commissioner.** A duly appointed member of the Idaho Human Rights Commission. (7-1-93)
- 04. Complainant.** Any person who files a complaint with the Commission pursuant to the Human Rights Act. (7-1-93)
- 05. Complaint.** A statement filed with the Commission pursuant to these Rules alleging an unlawful practice within the meaning of the Human Rights Act. The complaint may be in the form of a letter but, whenever timely possible, should be written on a complaint form provided by the Commission or on the complaint form used by the Equal Employment Opportunity Commission, and signed by the Complainant or their legal representative. (7-1-97)
- 06. Conciliation Agreement.** A written agreement settling the issues raised by the complaint and signed by the parties after a determination on the merits of the complaint by the Commission. (7-1-93)
- 07. Covered Entity.** Those persons and organizations within the jurisdiction of the Human Rights Act, as set forth in Sections 65-5901 and 67-5902, Idaho Code. (7-1-98)
- 08. Discriminatory Wage Act.** The Act set forth in Title 44, Chapter 17, Idaho Code, "Discriminatory Wage Rates Based Upon Sex." (7-1-93)
- 09. E.E.O.C.** The United States Equal Employment Opportunity Commission or any of its designated representatives. (7-1-93)
- 10. Human Rights Act.** As used herein, the term "Human Rights Act" shall mean the Human Rights Commission Act of 1969, as amended and codified as Title 67, Chapter 59, Idaho Code. (7-1-93)
- ~~**11. Mental Condition.** Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities. (7-1-93)~~
- 121. Party or Parties.** The Complainant, the Respondent, the Commission, and any other person authorized by the Commission to intervene in any proceeding. (7-1-93)
- ~~**13. Physical Condition.** Any physiological disorder, condition, cosmetic disfigurement, anatomical loss, or abnormality affecting one (1) or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine. (7-1-93)~~
- ~~**14. Record of Such a Disability.** A person may have "a record of such a disability" when he/she has a history of or has been misclassified as having a physical or mental condition that substantially limits one (1) or more major life activities. (7-1-97)~~
- ~~**15. Regarded as Having Such a Disability.** A person may be "regarded as having such a disability" when he/she:~~
- ~~**a.** Has a physical or mental impairment that does not substantially limit a major life activity but is treated by a covered entity as constituting such a limitation; (7-1-98)~~
- ~~**b.** Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment; or (7-1-93)~~
- ~~**c.** Has none of the impairments listed above but is treated by a covered entity as having such an impairment. (7-1-98)~~
- 162. Religion.** All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. (3-15-02)



**173. Respondent.** Any person against whom a complaint is filed in accordance with the Human Rights Act and these Rules. (7-1-93)

**184. Settlement Agreement.** A written agreement settling the issues raised by the complaint and signed by the parties prior to the Commission's making a determination on the merits of the complaint. (7-1-93)

**195. Sex.** The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. Subsection 010.19 shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. (3-15-02)

~~**20. Substantial Limitation.** A physical or mental condition constitutes a "substantial limitation" when a person is unable to perform a major life activity, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, that the average person in the general population can perform or is significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. (3-15-02)~~

~~**a.** The following factors should be considered in determining whether a physical or mental condition constitutes a substantial limitation: (3-15-02)~~

~~**i.** The nature and severity of the impairment; (3-15-02)~~

~~**ii.** The duration or expected duration of the impairment; and (3-15-02)~~

~~**iii.** The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment. (3-15-02)~~

~~**b.** With respect to the major life activity of working, a physical or mental condition constitutes a "substantial limitation" when a person is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. (3-15-02)~~

~~**c.** The following factors may be considered in determining whether a physical or mental condition constitutes a "substantial limitation" on the major life activity of "working": (3-15-02)~~

~~**i.** The geographical area to which the individual has reasonable access; (3-15-02)~~

~~**ii.** The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or (3-15-02)~~

~~**iii.** The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes). (3-15-02)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. DISABILITIES.**

The prohibition of discrimination on the basis of disability in the Act will be construed in compliance with the Americans with Disabilities Act as amended, 42 USC 12020 et seq. and federal regulations at 29 CFR Part 1630.  
(5-24-11)T

**01. Contagious Diseases.** A person suffering from a chronic contagious disease is a person with a disability if he/she meets the requirements of Section 67-5902(15), Idaho Code. That person is entitled to an individualized medical inquiry to determine if he/she is qualified for the job in question. Factors to be considered include the nature, duration and severity of the risk of infection, and the probability that the disease would be transmitted and would cause varying degrees of harm. (7-1-97)(5-24-11)T

**02. Alcoholism.** Alcoholism is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) Whenever alcoholism includes current use of alcohol, an employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

**03. Drug Addiction.** Drug addiction is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) No accommodation is necessary for drug addiction which includes current illegal use, possession, or selling of a controlled substance. An employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

**04. Reasonable Accommodations.** Reasonable accommodations are adjustments or modifications to the work assignment or work environment to enable a person with a disability to fulfill employment responsibilities. They may include, but are not limited to: (7-1-97)

- a. Making the worksite accessible to and usable by persons with a disability; (7-1-97)
- b. Modification of equipment or tools so they can be used by a person with a disability; (7-1-97)
- c. Job restructuring; (7-1-93)
- d. Modified work schedules, particularly as they may be necessary for the person to receive treatment for a disability; (7-1-93)
- e. Acquisition of adaptive aids or devices; (7-1-93)
- f. Reassignment to a vacant position. (7-1-93)

**05. Accommodations of a Personal Nature.** Employers shall not be required to provide accommodations of a personal nature, such as wheelchairs and hearing aids. Nor shall they be required to hire two (2) full-time employees to fill one (1) position. (7-1-93)

**06. Cooperation.** A person with a disability who seeks an accommodation must cooperate in the consideration of various accommodation options. An employer is not required to provide the "best" accommodation or the one most desired by the employee or applicant. The determination of "reasonableness" will be made on a case-by-case basis. (7-1-97)

**07. Pre-Employment Inquiry.** An employer, labor organization, or employment agency shall not make pre-employment inquiry of an applicant as to whether the applicant has a physical or mental impairment or as to the nature or severity of such impairment. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (7-1-93)

**IDAPA 45 - HUMAN RIGHTS COMMISSION**  
**45.01.01 - RULES OF THE IDAHO HUMAN RIGHTS COMMISSION**  
**DOCKET NO. 45-0101-1102**  
**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 Sections 67-5906(12) and 44-2704(2), 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 August 17, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Commission's rules have not been updated for several years. Non-substantive changes are being made to increase clarity, to eliminate unnecessary definitions, to replace references to "person" with "individual," and other minor wording improvements, as well as bring the rule into compliance with changes to federal law.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there are no substantive changes to the rules.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Deputy Attorney General Jeanne T. Goodenough, 317 West Main Street, Boise, Idaho 83735-0660. Phone: (208) 334 2873 ext. 4229. Email: [jeanne.goodenough@labor.idaho.gov](mailto:jeanne.goodenough@labor.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 29th day of June, 2011.

Jeanne T. Goodenough  
Deputy Attorney General  
Idaho Human Rights Commission  
317 West Main Street  
Boise, ID 83735-0660  
(208) 334 2873; FAX (208) 334 6125

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 45-0101-1102**

**002. WRITTEN INTERPRETATIONS.**

~~Explanations for rule changes are available for public inspection in the Office of the Human Rights Commission, 317 West Main Street, Boise, Idaho 83735-0660.~~ Brochures explaining various provisions of anti-discrimination laws are also available at the ~~address given above~~ office of the Idaho Human Rights Commission. (7-1-97)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. DECLARATORY RULINGS.**

Any ~~person~~ individual who petitionings for a declaratory ruling on the applicability of a statute or rule administered by the Human Rights Commission must substantially comply with this rule. The petition ~~shall~~ must be addressed to the Administrator and ~~shall~~ will: (7-1-93)(    )

**01. Identification.** Identify the petitioner and state the petitioner's interest in the matter; (7-1-93)

**02. State Ruling.** State the declaratory ruling that the petitioner seeks; and (7-1-93)

**03. Other Rationale. Indicate Cite** the statute, rule, or other controlling law and the factual allegations upon which the petitioner relies to support the petition. (7-1-93)(    )

~~**04. Legal Assertions. Legal assertions in the petition should be accompanied by citations of cases or statutory provisions.**~~ (7-1-93)

**006. OFFICE -- OFFICE HOURS -- ADDRESS -- RECORDS.**

The office of the Idaho Human Rights Commission is located at 317 West Main Street, Boise, Idaho 83735-0660. The Commission's email address is [inquiry@ihrc.idaho.gov](mailto:inquiry@ihrc.idaho.gov). Office hours are from 8:00 a.m. to 5:00 p.m. Mountain Time, except Saturday, Sunday, and legal holidays. This is the office where all filings must be made and where records are kept. The Administrator of the agency is the custodian of records. (7-1-97)(    )

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

~~**01. Administrator. The Administrator appointed by the Commission pursuant to the Human Rights Act.**~~ (7-1-93)

~~**02. Commission. The Idaho Human Rights Commission as created by the Human Rights Act.**~~ (7-1-93)

~~**03. Commissioner. A duly appointed member of the Idaho Human Rights Commission.**~~ (7-1-93)

**01. Act. The Human Rights Commission Act, Section 67-5901, Idaho Code, et seq.** (    )

~~**04. Complainant. Any person individual who files a complaint with the Commission pursuant to the Human Rights Act.**~~ (7-1-93)(    )

~~**05. Complaint. A statement filed with the Commission pursuant to these Rules alleging an unlawful practice within the meaning of the Human Rights Act. The complaint may be in the form of a letter but, whenever timely possible, should be written on a complaint form provided by the Commission or on the complaint form used by the Equal Employment Opportunity Commission (EEOC), and signed by the Complainant or their legal representative under penalty of perjury.**~~ (7-1-97)(    )

~~**06. Conciliation Agreement. A written agreement settling the issues raised by the complaint and signed by the parties after a determination on the merits of the complaint by the Commission.**~~ (7-1-93)

~~**07. Covered Entity. Those persons individuals and organizations within the jurisdiction of the Human Rights Act, as set forth in Sections 65-5901 and 67-5902, Idaho Code.**~~ (7-1-98)(    )

~~**08. Discriminatory Wage Act. The Act set forth in Title 44, Chapter 17, Idaho Code, "Discriminatory**~~

~~Wage Rates Based Upon Sex.”~~ (7-1-93)

~~095. E.E.O.C.~~ The United States Equal Employment Opportunity Commission or any of its designated representatives. (7-1-93)(    )

~~10. Human Rights Act.~~ As used herein, the term “Human Rights Act” shall mean the Human Rights Commission Act of 1969, as amended and codified as Title 67, Chapter 59, Idaho Code. (7-1-93)

~~11. Mental Condition.~~ Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities. (7-1-93)

~~1206. Party or Parties.~~ The Complainant, the Respondent, the Commission, and any other person individual or entity authorized by the Commission to intervene in any proceeding. (7-1-93)(    )

~~13. Physical Condition.~~ Any physiological disorder, condition, cosmetic disfigurement, anatomical loss, or abnormality affecting one (1) or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito urinary, hemic and lymphatic, skin and endocrine. (7-1-93)

~~14. Record of Such a Disability.~~ A person may have “a record of such a disability” when he/she has a history of or has been misclassified as having a physical or mental condition that substantially limits one (1) or more major life activities. (7-1-97)

~~15. Regarded as Having Such a Disability.~~ A person may be “regarded as having such a disability” when he/she:

~~a. Has a physical or mental impairment that does not substantially limit a major life activity but is treated by a covered entity as constituting such a limitation;~~ (7-1-98)

~~b. Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment; or~~ (7-1-93)

~~c. Has none of the impairments listed above but is treated by a covered entity as having such an impairment.~~ (7-1-98)

~~16. Religion.~~ All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. (3-15-02)

~~107. Respondent.~~ Any person The party against whom a complaint is filed in accordance with the Human Rights Act and these Rules. (7-1-93)(    )

~~18. Settlement Agreement.~~ A written agreement settling the issues raised by the complaint and signed by the parties prior to the Commission's making a determination on the merits of the complaint. (7-1-93)

~~19. Sex.~~ The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. Subsection 010.19 shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. (3-15-02)

~~20. Substantial Limitation.~~ A physical or mental condition constitutes a “substantial limitation” when a person is unable to perform a major life activity, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, that the average person in the general population can

~~perform or is significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.~~ (3-15-02)

~~a. The following factors should be considered in determining whether a physical or mental condition constitutes a substantial limitation:~~ (3-15-02)

~~i. The nature and severity of the impairment;~~ (3-15-02)

~~ii. The duration or expected duration of the impairment; and~~ (3-15-02)

~~iii. The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.~~ (3-15-02)

~~b. With respect to the major life activity of working, a physical or mental condition constitutes a "substantial limitation" when a person is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.~~ (3-15-02)

~~c. The following factors may be considered in determining whether a physical or mental condition constitutes a "substantial limitation" on the major life activity of "working":~~ (3-15-02)

~~i. The geographical area to which the individual has reasonable access;~~ (3-15-02)

~~ii. The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or~~ (3-15-02)

~~iii. The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).~~ (3-15-02)

#### **011. REPRESENTATION OF PARTIES.**

In proceedings before the Commission, Complainants, Respondents, witnesses and any other ~~persons~~ **individuals or entities** authorized by the Commission to intervene must be represented as follows: (3-30-01)(    )

**01. Natural Person Individual.** An ~~natural person~~ **individual** must represent himself or herself or be represented by an attorney, or a family member. (3-30-01)(    )

**02. Partnership.** A partnership must be represented by a partner, a duly authorized employee, or an attorney. (3-30-01)

**03. Corporation.** A corporation must be represented by an officer, a duly authorized employee, or an attorney. (3-30-01)

**04. Other Entity.** A municipal corporation, state, federal, tribal, or local government agency, or entity, incorporated association, or non-profit organization must be represented by an officer, a duly authorized employee or an attorney. (3-30-01)

#### **012. INTERPRETATION OF STATE LAW.**

In evaluating allegations of discrimination on the basis of race, color, religion, sex or national origin under the Act, the Commission will rely on the interpretations of Title VII of the Civil Rights Act, 42 USC 2000e et seq. and federal regulations at 29 CFR Parts 1604 through 1607. The Commission will rely on interpretations of the Age Discrimination in Employment Act, 42 USC 621 et seq., and regulations at 29 CFR Part 1625 in determining allegations of age discrimination. (    )

**0123. -- 099. (RESERVED)**

**100. TEMPORARY ~~DISABILITIES~~ IMPAIRMENTS.**

Minor illnesses or conditions which are only temporarily disabling will not be considered to be disabilities under ~~this~~ ~~the~~ ~~Act~~. ~~Examples of such conditions include, but are not limited to: broken bones, sprains, or colds.~~(7-1-97)( )

**101. DISABILITIES.**

The prohibition of discrimination on the basis of disability in the Act will be construed in compliance with the Americans with Disabilities Act as amended, 42 USC 1201 et seq. and federal regulations at 29 CFR Part 1630.  
( )

**01. Contagious Diseases.** An ~~person suffering from~~ ~~individual who has~~ a chronic contagious disease is an ~~person individual~~ with a disability if he ~~or~~ she meets the requirements of Section 67-5902(15), Idaho Code. That ~~person individual~~ is entitled to an individualized medical inquiry to determine if he ~~or~~ she is qualified for the job in question. Factors to be considered include the nature, duration and severity of the risk of infection, and the probability that the disease would be transmitted and would cause varying degrees of harm. (7-1-97)( )

**02. Alcoholism.** Alcoholism is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) Whenever alcoholism includes current use of alcohol, an employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

**03. Drug Addiction.** Drug addiction is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) No accommodation is necessary for drug addiction ~~which that~~ includes current illegal use, possession, or selling of a controlled substance. An employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)( )

**04. Reasonable Accommodations.** Reasonable accommodations are adjustments or modifications to the work assignment or work environment to enable an ~~person individual~~ with a disability to fulfill employment responsibilities. They may include, but are not limited to: (7-1-97)( )

- a. Making the worksite accessible to and usable by ~~persons individuals~~ with a disability; (7-1-97)( )
- b. Modification of equipment or tools so they can be used by an ~~person individual~~ with a disability; (7-1-97)( )
- c. Job restructuring; (7-1-93)
- d. Modified work schedules, particularly as they may be necessary for the ~~person individual~~ to receive treatment for a disability; (7-1-93)( )
- e. Acquisition of adaptive aids or devices; (7-1-93)
- f. Reassignment to a vacant position. (7-1-93)

**05. Accommodations of a Personal Nature.** Employers ~~shall are~~ not ~~be~~ required to provide accommodations of a personal nature, such as wheelchairs and hearing aids. ~~nor shall are~~ they ~~be~~ required to hire two (2) full-time employees to fill one (1) position. (7-1-93)( )

**06. Cooperation.** An ~~person individual~~ with a disability who seeks an accommodation must cooperate in the consideration of various accommodation options. An employer is not required to provide the "best" accommodation or the one most desired by the employee or applicant. The determination of "reasonableness" will be made on a case- by-case basis. (7-1-97)( )

**07. Pre-Employment Inquiry.** An employer, labor organization, or employment agency ~~shall~~ may not make pre-employment inquiry of an applicant as to whether the applicant has a physical or mental impairment, ~~or as to~~ the nature or severity of such impairment, or a worker's compensation claim. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (7-1-93)(    )

**102. -- 199. (RESERVED)**

**200. MEDICAL ISSUES.**

**01. Medical Examinations and Inquiries.** Medical examinations and inquiries are permitted as follows: (7-1-97)

**a.** A covered entity may require a medical examination or inquiry after making an offer of employment to an applicant and before he ~~or~~ she begins employment duties, and may condition an offer of employment on the results of such examination or inquiry, if all entering employees in the same job category are subjected to such an examination or inquiry regardless of disability. Medical inquiries or examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. If certain criteria are used to screen out an applicant, however, the exclusionary criteria must be job-related and consistent with business necessity. (7-1-97)(    )

**b.** A covered entity may require a medical examination or make an inquiry of an employee that is job-related and consistent with business necessity. Inquiries may be made into the ability of an employee to perform job-related functions. (7-1-93)

**c.** A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program. (7-1-93)

**02. Disabilities Not Presently Job-Related.** An employer ~~shall~~ may not discriminate against an applicant or employee because of a disability ~~which that~~ is not presently job-related but ~~which that~~ may worsen and become job-related in the future. (3-30-01)(    )

**03. Confidentiality, Exceptions.** Information about the medical condition or history of an applicant or employee should be considered confidential except that: (7-1-93)

**a.** Supervisors and managers may be informed regarding restrictions on the work or duties of ~~persons~~ individuals with a disability and regarding any accommodations or health or safety precautions; ~~and~~ (7-1-97)(    )

**b.** First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; ~~and~~. (7-1-93)(    )

~~**e.** Enforcement agencies shall be provided relevant information upon request when investigating complaints under state or federal law. (7-1-93)~~

**201. -- 299. (RESERVED)**

**300. COMPLAINTS.**

**01. Who May File.** A complaint may be filed by any of the following: (7-1-93)

**a.** Any ~~person~~ individual for himself ~~or~~ herself, ~~or also on behalf of himself/herself and other similarly situated individuals~~ a family member on behalf of a minor, or an individual with guardianship, power of attorney, or similar legal authority over another, who ~~claimings~~ claims to be aggrieved by an alleged unlawful discriminatory practice as defined in the Act; (7-1-97)(    )



b. A Commissioner or ~~the~~ Administrator ~~may request~~<sup>ing</sup> the Commission to initiate a complaint; ~~provided he/she has sufficient reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring. Upon such request~~ ~~†~~The Commission ~~shall~~ <sup>will</sup> review the reasons provided by the initiating Commissioner or Administrator and may initiate a complaint if satisfied that there is reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring; (7-1-97)(    )

c. Any ~~person~~ ~~individual who~~ claim~~ing~~<sup>s</sup> that he/ ~~or~~ she has been discharged, expelled, or otherwise discriminated against by an employer, labor organization, or employment agency because he/ ~~or~~ she opposed practices forbidden under the ~~Human Rights~~ Act, or because he/ ~~or~~ she has filed a complaint, testified, assisted or participated in any manner in an investigation, hearing or other procedure before the Commission. (7-1-97)(    )

**02. Commission Assistance.** Assistance in filing complaints ~~shall~~ <sup>will</sup> be available to any Complainant by a Commissioner, the Administrator, or staff member. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Administrator, there is no reason to suspect that illegal discrimination may have occurred, or if the action is barred by the terms of Subsection 300.06.a. (7-1-97)(    )

**03. Contents of Complaint.** A complaint should contain the following: (7-1-93)

a. The full name, mailing address, and telephone number (if any) of the Complainant or Complainants; (7-1-93)

b. The full name, mailing address, and telephone number (if any and if known) of the Respondent or Respondents; (7-1-93)

c. A brief written statement sufficiently clear to identify the practices and to describe generally the action or practice alleged to be unlawful; (7-1-98)

d. The date or dates on which the alleged unlawful discriminatory practices occurred and, if the alleged unlawful practice is of a continuous nature, the dates between which said continuing practices are alleged to have occurred; (7-1-93)

e. A statement as to any other action which has been instituted in any other forum or agency based on the same grievance as is alleged in the complaint. (7-1-93)

**04. Medical Documentation.** ~~Persons~~ ~~Individuals~~ filing disability discrimination complaints may be required to furnish the Commission with opinions or records from duly licensed health professionals regarding (a) the nature of their disabilities, and (b) any limitations, including work restrictions, caused by the disability. Medical reports from the following sources will be accepted: physicians and osteopathic physicians, nurse practitioners, counselors, psychologists, occupational therapists, clinical social workers, dentists, audiologists, speech pathologists, podiatrists, optometrists, chiropractors, physical therapists, and substance abuse treatment providers, insofar as any opinion or evaluation within the scope of the relevant license applies to the individual's physical or mental impairment. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. (7-1-97)(    )

**05. Method of Filing.** A complaint may be filed~~+~~ by personal delivery, mail, email, or facsimile delivered to the Commission office in Boise. (7-1-97)(    )

**06. Time for Filing.** The following time limitations apply to the filing of complaints with the Commission: (7-1-93)

a. A complaint must be filed within one (1) year after the alleged unlawful practice occurs. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said unlawful practice ~~shall~~ <sup>will</sup> be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint ~~shall have been~~ <sup>is</sup> filed if the alleged unlawful practice continues. (7-1-93)(    )

b. ~~Upon receipt of~~ The date a complaint is received at the Commission's office, ~~the date of such receipt shall~~ <sup>will</sup> be noted ~~there~~ <sup>on</sup> the complaint. For purposes of compliance with Section 67-5908(4), Idaho Code,

the date of notation ~~shall~~ will be the date of filing. (7-1-93)( )

c. Notwithstanding any other provisions of these rules, a complaint ~~shall~~ will be deemed to have met the timelines requirement of Subsection 300.06.a. when the Commission receives, in any manner described in Subsection 300.05.a., a written statement sufficiently precise to identify the practices and to describe generally the action or practice alleged to be unlawful. (7-1-97)( )

**07. Complaints Deferred by E.E.O.C.** Any complaint deferred to the Commission by the E.E.O.C. ~~shall~~ will be treated, for purposes of filing requirements, according to the rules ~~as~~ stated above. (7-1-93)( )

**08. Amended Complaints.** A complaint may be amended, before the determination by the Commission and at the discretion of the Administrator, to cure technical defects or omissions, or to clarify ~~and~~ or amplify allegations by the Complainant. (7-1-97)( )

**09. Supplemental Complaint.** The Complainant may file a supplemental complaint setting forth actions ~~which that~~ have allegedly occurred subsequent to the date of the original or amended complaint, and said supplemental complaint, if timely filed, will be considered together in the same proceeding with the original or amended complaint whenever practicable. (7-1-93)( )

**10. Withdrawal of Complaint.** Upon the request of the Complainant, on a form provided by the Administrator stating the reasons for such request, a complaint, or any part thereof, may be withdrawn ~~upon~~ with the written consent of the Administrator. If a complaint is withdrawn pursuant to the provision of these rules, the Administrator ~~shall~~ will close the case and notify the parties. (7-1-93)( )

**11. Initial Actions.** ~~Upon the filing of a complaint~~ When filed, said a complaint ~~shall~~ will be docketed, assigned a complaint number, and assigned to the staff for ~~settlement mediation~~ or investigation ~~and conciliation~~. (7-1-93)( )

**12. Service on Respondent.** As promptly as possible, the Commission ~~shall cause~~ will serve a copy of ~~said the~~ complaint ~~to be served~~ on the Respondent by: (5-3-03)( )

a. Personal delivery; (5-3-03)

b. Mail; ~~or~~ (5-3-03)( )

c. Email; or ( )

~~ed.~~ Facsimile. (5-3-03)

**13. Mediation.** Upon the filing of a complaint, the Commission or its delegated staff member ~~shall~~ will endeavor to resolve the matter by informal means. Such informal means may include, at the discretion of the Commission staff, ~~the holding of~~ a mediation conference at a time and place acceptable to all participants; ~~if held, a mediation conference shall be for the purposes of to~~ clarifying the positions of the parties to the complaint and ~~of exploring~~ any bases for no-fault settlement. A mediation conference is not, ~~and shall not be considered for any purposes to be,~~ a contested case hearing under Section 67-5209, Idaho Code. (7-1-97)( )

**14. Settlement.** ~~If~~ Terms of any settlement ~~are~~ agreed to by the parties at any time prior to a determination by the Commission ~~as to on~~ the merits of the charge, ~~said terms shall~~ will be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Administrator will ~~cause the case to be~~ closed the case. (7-1-93)( )

**15. Answers.** The Respondent ~~shall~~ must answer or otherwise respond to the complaint in writing within thirty (30) days of receiving it. A copy of ~~said Respondent's~~ answer, including any attachments ~~thereto submitted~~, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause ~~shown~~ extend the time within which the answer may be filed. The answer ~~shall~~ must be fully responsive to each allegation contained in the complaint ~~which that~~ is not denied or admitted in the answer ~~shall~~ will be deemed admitted unless the Respondent ~~shall~~ states in the answer ~~he/she~~ that Respondent is

without knowledge or information sufficient to form a belief. If the Respondent fails to answer or otherwise respond to the complaint within thirty (30) days of receipt or such time as may be extended by the Commission, the Commission may act on the complaint based on the information provided by the Complainant. Upon application, the Commission may for good cause shown permit the Respondent to amend its answer to the complaint. Any amendments to the complaint, or any supplemental complaint, shall will be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, shall must be submitted within ten (10) working days. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause ~~shown~~. (7-1-97)(    )

**16. ~~Interrogatories~~ Requests for Information.** At any time after the filing of a complaint, the Commission staff may issue to either the Complainant or the Respondent ~~interrogatories~~ requests for information regarding any matter; that is not privileged, ~~which and that~~ is relevant to the subject matter involved. ~~It is not ground for objection that the information sought will be inadmissible in court if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~ (7-1-93)(    )

**17. ~~Interrogatory~~ Answers Returned.** Answers to ~~the interrogatories~~ requests for information shall must be returned to the Commission office ~~within thirty (30) days from the date of service of said interrogatories~~ at a time determined by the investigator. (7-1-93)(    )

~~**18. Extension.** Upon application by a party, for good cause shown, the Administrator may grant one (1) extension of time for filing answers to interrogatories, said extension not to exceed an additional fifteen (15) days.~~ (7-1-93)

~~**19. Orders.** In the event that a party objects to certain interrogatories, and after an attempt has been made to resolve any difference between the Commission and the party, the Commission may issue an order compelling the party to answer the interrogatories. This order must be signed by at least two (2) Commissioners. An order issued under this rule shall be enforceable by application to the District Court.~~ (7-1-93)

~~**2018. Narrative Statement.** The Commission staff may, ~~in specific cases, seek from a party~~ request a narrative statement ~~of response in addition to or rather than answers to interrogatories~~ from a party. ~~In such cases, the narrative statement should must include all information which that the party desires to be considered by the Commission, in determining whether to credit the allegations of the complaint.~~ (7-1-93)(    )~~

~~**219. File Briefs.** Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out his or her position or interpretation of the law.~~ (7-1-97)

~~**220. Summary of Investigation.** At the completion of the investigation, the staff member to whom the case is assigned shall will prepare a report containing a summary of the investigation and submit it to the Administrator to review.~~ (7-1-93)(    )

~~**231. Administrative Closure.** At any point during the handling of a particular case, the Administrator may close the case for administrative reasons. ~~Such reasons shall that~~ include, but are not limited to: (7-1-99)(    )~~

~~a. Failure of the Complainant to accept a full relief settlement offer; (7-1-93)~~

~~b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer interrogatories requests for information or failure to provide medical information as requested; (7-1-93)(    )~~

~~c. Inability to locate the Complainant; (7-1-93)~~

~~d. It appearing upon investigation that the case is not jurisdictional within the jurisdiction of the Commission; (7-1-93)(    )~~

~~e. The Complainant's filing of a suit in either state or federal court alleging the same unlawful practices as complained of to the Commission. (7-1-93)(    )~~

**242.** **Notification of Closure.** The Administrator ~~shall~~ **will** notify the parties of ~~such an~~ administrative closure, including the grounds ~~therefor~~ **the decision**, as promptly as possible. (7-1-93)(    )

**253.** **Decision on the Merits.** At the completion of the investigation and approval of the summary by the Administrator, the Commission or a designated panel of at least three (3) Commissioners ~~shall~~ **will** determine whether there is probable cause to believe that the Respondent has been or continues to be engaged in any unlawful discriminatory practices defined in the Act. (7-1-93)(    )

**264.** **No Probable Cause.** If the Commission or designated panel finds no probable cause ~~to credit on~~ the allegations of the complaint, a statement of no probable cause and order of dismissal will be issued for the Commission by the Administrator. The summary of investigation, statement, and order ~~shall~~ **will** be sent to Complainant and Respondent, thereby closing the case. (5-3-03)(    )

**275.** **Probable Cause.** If the Commission or designated panel finds probable cause ~~to credit on~~ the allegations of the complaint, a statement of probable cause ~~shall~~ **will** be issued. The summary of investigation and statement ~~shall~~ **will** be sent to the Complainant and the Respondent. (5-3-03)(    )

**286.** **Conciliation.** If the Commission finds probable cause ~~to credit on~~ the allegations of the complaint, the Commission staff ~~shall~~ **will** endeavor through conference with the parties to redress and eliminate the possible unlawful discriminatory practice by conciliation. (7-1-93)(    )

**297.** **Conciliation Agreement.** If ~~the commission staff shall succeed in endeavors to conciliate conciliation is successful~~, a written Conciliation Agreement ~~shall~~ **will** be prepared, ~~which shall set forth that states~~ all measures to be taken by any party, and if appropriate, compliance provisions. The Conciliation Agreement ~~shall must~~ be signed by the parties, and the Administrator ~~shall cause the will close the case to be closed~~. (7-1-93)(    )

**3028.** **Failure of Agreement.** ~~In the event of If the parties failure~~ to reach terms of conciliation, ~~agreeable to all parties, the Administrator shall so certify and assign the case to the Commission's legal counsel. The Commission, after review by its legal counsel, shall will~~ determine whether or not to pursue the case in the District Court. (7-1-93)(    )

**3129.** **No Action.** If the Commission determines not to pursue the case in District Court, the Administrator ~~shall so will~~ notify Complainant and Respondent, close the case, and advise Complainant of his or her right to pursue the case through a private cause of action. (7-1-93)(    )

**320.** **Action.** If the Commission decides to pursue a case, it ~~shall direct its legal counsel to will~~ file an action in District Court in the name of the Commission ~~for the use on behalf~~ of the ~~person or persons alleging discrimination Complainant~~. (7-1-93)(    )

**331.** **Confidentiality of Records.** ~~In order to protect the interests of all parties in reaching successful settlements of discrimination charges without resorting to court action, The records of the Commission are confidential according to Section 9-340B(8), Idaho Code. #~~The Commission and its employees will not reveal information about a case to nonparties except as may be necessary to conduct a full and fair investigation ~~or to cooperate with other government law enforcement agencies~~. (7-1-93)(    )

**34.** **Federal Compliance.** ~~In the interest of consistency and to avoid confusion on the part of persons governed by both the State and Federal anti discrimination laws, the Commission will generally follow the interpretations of the Federal anti discrimination laws in examining the merits of a complaint filed with it under this Act. If a person files a complaint under Title 67, Chapter 59, Idaho Code, and Title 44, Chapter 17, Idaho Code, the Commission will attempt to avoid duplication in investigation and settlement efforts, whenever possible.~~ (7-1-97)

**352.** **Document Destruction.** The Commission ~~will may~~ retain closed investigatory files for three (3) years from the date of closure at which time these documents may ~~be~~ destroyed at the discretion of the Administrator. (7-1-97)(    )

**363.** **Notice of Right to Sue.** At the time of case closure, the Administrator will issue a notice of administrative dismissal notifying the ~~e~~Complainant of his or her right to file a civil action in District Court. Any such suit must be filed within ninety (90) days of the date of this notice. (7-1-99)(    )

**IDAPA 54 - OFFICE OF THE STATE TREASURER**

**54.01.01 - REPORTS FOR PUBLIC BOND ISSUES**

**DOCKET NO. 54-0101-1101 (CHAPTER REPEAL)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to former Section 67-1222, 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 August 17, 2011. 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: These rules are no longer needed because Section 67-1222, Idaho Code, was repealed by the 2010 Legislature in House Bill No. 446. Section 67-1222 was repealed because there was no longer a need to require the submission of debt information to the State Treasurer's Office due to the establishment of Electronic Municipal Market Access (EMMA) by the Municipal Securities Rulemaking Board (MSRB).

**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 repeal of IDAPA 54.01.01 is necessary to comply with deadlines in amendments to governing law. Section 67-1222, Idaho Code, was repealed by the 2010 Legislature resulting in these rules being obsolete.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule repeal is necessary pursuant to the repeal of Section 67-1222, Idaho Code, by the 2010 Legislature in House Bill No. 446.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Laura Steffler, Chief Deputy Treasurer, (208) 332-2999. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 13th day of July, 2011.

Ron Crane, Treasurer  
Idaho State Treasurer  
700 W. Jefferson St., Suite 126  
P. O. Box 83720

Boise, ID 83720-0091  
Phone: (208) 334-3200  
Facsimile: (208) 332-3959

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**IDAPA 54.01.01 IS BEING REPEALED IN ITS ENTIRETY**

# **IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD**

## **57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD**

### **DOCKET NO. 57-0101-1101**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 18-8314(3), 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 August 19, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Senate Bill No. 1154aa eliminated the Sexual Offender Classification Board effective July 1, 2011, and in its place created the Sexual Offender Management Board which will assume some of the responsibilities of the previous board. The bill also effectively removed statutory references to the Violent Sexual Predator designation procedures. This rulemaking effects a board name change and eliminates the procedures for a VSP designation process that is no longer in place.

**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:

Compliance with deadlines in amendments to governing law or federal programs.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is a result of statutory changes that became effective July 1, 2011.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kathy Baird at (208) 658-2149.

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 August 24, 2011.

DATED this 7th day of July, 2011.

Kathy Baird, Management Assistant  
Sexual Offender Management Board  
1299 N Orchard St Suite 110  
Boise, ID 83706  
(208) 658-2149 ph; (208) 327-7102 fax

**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 57-0101-1101**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 18-8314(73), Idaho Code, to implement the provisions of Sections 18-8312 through 18-8327~~16~~, Idaho Code. ~~(3-24-05)(7-1-11)T~~

**001. TITLE AND SCOPE.**

**01. Title.** These rules are cited as IDAPA 57.01.01, "Rules of the Sexual Offender ~~Classification~~ Management Board." ~~(3-24-05)(7-1-11)T~~

**02. Scope.** These rules provide procedures for the Sexual Offender ~~Classification~~ Management Board to: ~~(3-24-05)(7-1-11)T~~

- ~~a.~~ *Determine whether a sexual offender should be designated as a Violent Sexual Predator;* ~~(3-24-05)~~
- ~~b.~~ **a.** Set certified evaluator qualifications and standards; (3-24-05)
- ~~b.~~ **b.** Approve, issue, renew, deny, suspend or revoke psychosexual evaluator certification; and (3-24-05)
- ~~c.~~ **c.** Establish fees for initial psychosexual evaluator certification and annual psychosexual evaluator certification renewal. (3-24-05)

**03. Relationship to the Department of Correction.** The board is created in the Idaho Department of Correction, and relies upon the department for fiscal and administrative support. The governor appoints the board members. The powers and duties of the board are separate from the Department of Correction, and are set forth in Section 18-8314, Idaho Code. (3-24-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The Sexual Offender ~~Classification~~ Management Board administrative office is located at the Department of Correction headquarters, 1299 North Orchard, Suite 110, Boise, Idaho 83706. Business hours are typically 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is Office of the Sexual Offender ~~Classification~~ Management Board, 1299 North Orchard, Suite 110, Boise, Idaho 83706. The telephone number is (208) 658-2149. The facsimile number is (208) 327-7102. The board's website address is ~~Sex Offender Registry at~~ <http://www.socb.idaho.gov>. ~~(3-24-05)(7-1-11)T~~

**006. PUBLIC RECORDS ACT COMPLIANCE.**

**01. Administrative Rules.** The rules contained herein are promulgated pursuant to Title 67, Chapter 52, Idaho Code, and are public records. (3-24-05)

**02. Public Records Requests.** Requests for public information are processed in compliance with ~~Sections 18-8321, 18-8323, and 20-223, Idaho Code;~~ IDAPA 06.01.01, "Rules of the Board of Correction"; and the Idaho Public Records Act. ~~(3-24-05)(7-1-11)T~~

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01.** **Board.** The Sexual Offender ~~Classification~~ **Management** Board described in Section 18-8312, Idaho Code. ~~(3-24-05)~~(7-1-11)T
- 02.** **Central Roster of Certified Evaluators.** A roster of evaluators who meet the qualifications, and are certified by the board to perform psychosexual evaluations. (3-24-05)
- 03.** **Certified Evaluator.** Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 54, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of adult sexual offenders, shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in Sections 18-8314, Idaho Code. (3-24-05)
- 04.** **Client.** A person receiving mental health services from a certified evaluator. A client may be a person who is not a sexual offender. (3-24-05)
- 05.** **Evaluation.** For the purpose of certification eligibility, defined as the direct provision of comprehensive evaluation and assessment services to an adult who has been convicted of a sexual offense. The evaluation must be related to the client's sexual offending behavior. (3-24-05)
- ~~**06.** **Mental Abnormality.** A congenital or acquired condition affecting the emotional or volitional capacity of a person in a manner that predisposes him to commit criminal sexual acts to a degree that makes him a menace to the health, safety, or both, of other persons. (3-24-05)~~
- ~~**07.** **Personality Disorder.** A congenital or acquired physical or mental condition resulting in a general lack of power or desire to control sexual impulses. (3-24-05)~~
- ~~**08.** **Predatory.** Actions directed at an individual who was selected by the offender for the primary purpose of engaging in illegal sexual behavior. (3-24-05)~~
- ~~**096.** **Psychosexual Evaluation.** A comprehensive evaluation and assessment specifically addressing an offender's sexual development, sexual deviancy, sexual history and risk of re-offense. (3-24-05)~~
- ~~**107.** **Quality Assurance.** Technical review of a psychosexual evaluation report to assure minimum standards are met. The board conducts the review. (3-24-05)~~
- ~~**108.** **Sexual Offender.** A person convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts. (3-24-05)~~
- ~~**12.** **Sexually Violent Offense.** (3-24-05)~~
- ~~**a.** A criminal offense as listed in Section 18-8314, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts; or (3-24-05)~~
- ~~**b.** Engaging in physical contact with another person with intent to commit sexual abuse or aggravated sexual abuse as described in Sections 2241 and 2242 of Title 18, United States Code, and Section 18-8303(1), Idaho Code. (3-24-05)~~
- 09.** **Sexual Offender Classification Board.** A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. (7-1-11)T
- 130.** **Treatment.** For the purpose of certification eligibility, defined as the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense. Treatment must be directly relevant to the client's sexually offending behavior. (3-24-05)



~~14. **Victim.** A person, including the immediate family of a minor, named in the complaint, information or indictment, who suffers physical or emotional injury as the result of the offender's criminal conduct. (3-24-05)~~

~~15. **Violent Sexual Predator.** A person convicted of an offense listed in Section 18-8314, Idaho Code, and who is determined by the board to pose a high risk of committing an offense or engaging in predatory sexual conduct who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise. (3-24-05)(7-1-11)T~~

**011. ABBREVIATIONS.**

**01. ATSA.** The Association for the Treatment of Sexual Abusers. (3-24-05)

**02. DSM-IV.** The "Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition," published by the American Psychiatric Association. (3-24-05)

**03. IDOC.** The Idaho Department of Correction. (3-24-05)

~~**04. SOCB.** The Sexual Offender Classification Board. (7-1-11)T~~

~~**05. VSP.** Violent Sexual Predator. (3-24-05)~~

**012. -- 019. (RESERVED)**

**020. RECORDKEEPING.**

**01. Evaluators.** Records on all applicants and certifications issued, renewed, denied, suspended, and revoked shall be maintained for a period not less than five (5) years. (3-24-05)

**02. Violent Sexual Predators.** The file on a sexual offender ~~that~~ who was designated as a violent sexual predator by the SOCB is maintained by the board and is considered the official file for all purposes. (3-24-05)(7-1-11)T

**021. BOARD MEETINGS.**

**01. Meetings.** The board meets at least quarterly and may meet more frequently. All business of the board is conducted in compliance with the open meeting law, pursuant to Title 67, Chapter 23, Idaho Code, and Section 18-8315, Idaho Code. (3-24-05)

**02. Agenda.** An agenda for each regularly scheduled meeting is posted in ~~the IDOC central office at least twenty-four (24) hours prior to the regularly scheduled meeting~~ compliance with Section 67-2343, Idaho Code. (3-24-05)(7-1-11)T

**022. -- 030. (RESERVED)**

~~**031. OFFENDERS SUBJECT TO EVALUATION.**~~

~~**01. Pre-Sentence.** A sexual offender who is convicted on or after July 1, 1993 of any offense listed in Section 18-8304, Idaho Code, is subject to psychosexual evaluation prior to sentencing, if ordered by the court. (3-24-05)~~

~~**02. Pre-Release.** Prior to release from incarceration, a sexual offender whose conviction is listed in Section 18-8314(1), Idaho Code, and who has been referred by the IDOC or the Commission for Pardons and Parole, shall be considered by the board for review for possible VSP designation. (3-24-05)~~

~~**03. Under IDOC Supervision.** (3-24-05)~~

~~a. Upon recommendation by the supervising officer, the Commission for Pardons and Parole may request the board to consider a sexual offender for review for possible VSP designation. The offender must be under parole supervision for a crime as listed in Section 18-8314(1), Idaho Code. (3-24-05)~~

~~b. Upon recommendation by the supervising officer, the court having jurisdiction over a sexual offender may request the board to consider the offender for review for possible VSP designation. The offender must be under court ordered probation for a crime as listed in Section 18-8314(1), Idaho Code. (3-24-05)~~

~~04. Under Federal Supervision. The federal court having jurisdiction over a sexual offender who is residing in Idaho may request the board to consider the offender for review for possible VSP designation. The offender must be under federal supervision for conviction of a crime as listed in Section 18-8214(1), Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts. (3-24-05)~~

~~032.—039. (RESERVED)~~

**040. CERTIFIED EVALUATOR QUALIFICATIONS.**

Each evaluator who performs an adult psychosexual evaluation pursuant to Sections 18-8316 ~~and 18-8317~~, Idaho Code, must meet the qualifications as set forth in this section and be certified by the board. ~~(3-24-05)~~ **(7-1-11)T**

**01. Credential.** The credential of a certified evaluator must be in good standing with no currently pending disciplinary action by the issuing authority. The certified evaluator shall be a recognized professional, who specializes in evaluation, treatment, or both, of adult sexual offenders. (3-24-05)

**02. Educational and Professional Qualifications.** A certified evaluator must be: (3-24-05)

**a.** A licensed psychiatrist pursuant to Title 54, Chapter 18, Idaho Code; or (3-24-05)

**b.** A licensed masters or doctoral level mental health professional pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. (3-24-05)

**03. Licensure.** Idaho licensure is required pursuant to Section 18-8303, Idaho Code. A certified evaluator must maintain licensure by the appropriate Idaho licensing board for the duration of his evaluator certification. (3-24-05)

**04. Experience Qualifications.** For initial certification, the certified evaluator applicant shall have at least two thousand (2000) hours of adult sexual offender treatment and evaluation experience within the preceding ten (10) years. The two thousand (2000) hours must include: (3-24-05)

**a.** At least two hundred fifty (250) hours of adult sexual offender evaluation experience; and (3-24-05)

**b.** At least two hundred fifty (250) hours of adult sexual offender treatment experience. (3-24-05)

**05. Understanding.** A certified evaluator shall have a thorough understanding of counter-transference issues and a broad knowledge of sexuality in the general population. A certified evaluator shall also have a good understanding of basic theories and typologies of sexual offenders and sexual assault victims. (3-24-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.**

**01. General Considerations.** A certified evaluator shall: (3-24-05)

- a. Be fully aware of and adhere to the standards of his area of credentialing; (3-24-05)
- b. Subscribe to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Standards and Guidelines, as referenced in Section 004 of these rules; (3-24-05)
- c. Be knowledgeable of statutes and scientific data relevant to specialized adult sexual offender evaluation; (3-24-05)
- d. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Sections 18-8316 ~~and 18-8317~~, Idaho Code; ~~(3-24-05)~~ (7-1-11)T
- e. Be committed to community protection and safety; (3-24-05)
- f. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgement and risk exploitation; and (3-24-05)
- g. Have no sexual relationships with any client. (3-24-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~132.—149. (RESERVED)~~

~~150. EVALUATION FOR VIOLENT SEXUAL PREDATOR REVIEW.~~

~~The sexual offender referred to the board for VSP review shall be evaluated as set forth in Section 130 of these rules. (3-24-05)~~

~~01. Evaluation Process. (3-24-05)~~

~~a. The evaluator shall inform the sexual offender that the psychosexual evaluation is part of the board's review to determine if the offender should be designated as a VSP. (3-24-05)~~

~~b. The sexual offender shall have an opportunity for input at the time of the psychosexual evaluation. (3-24-05)~~

~~c. The board may request a polygraph examination. Refusal or declination to participate in a polygraph examination will not be considered as failure to cooperate as set forth in Section 151 of these rules. (4-11-06)~~

~~151. FAILURE TO COOPERATE.~~

~~Public safety takes precedence over the decision of a sexual offender not to cooperate with the evaluation for VSP designation review. The sexual offender shall be informed that the board may designate an offender as a VSP if he fails to cooperate with the psychosexual evaluation process or refuses to release records for the board's VSP designation review. (3-24-05)~~

~~152. INTENTION TO RE-OFFEND.~~

~~If credible evidence supports a finding that a sexual offender has indicated an intention to re-offend, the offender shall be referred to the board for VSP designation review. Pursuant to Section 18-8314(5), Idaho Code, the sexual offender shall be designated as a VSP. (3-24-05)~~

~~153. SCOPE OF EVALUATION.~~

~~The board and the evaluator conducting the psychosexual evaluation may have access to and may review all obtainable records on the sexual offender to conduct the VSP designation assessment. If required, the offender shall sign a release of information to comply with state or federal regulations. (3-24-05)~~

~~154.—169. (RESERVED)~~

**170. BOARD REVIEW.**

~~The board shall assess how biological, psychological, and situational factors, may cause or contribute to the offender's sexual behavior. (3-24-05)~~

~~01. Evidence. (3-24-05)~~

~~a. The board may collect documentary evidence in the form of copies, facsimiles, hearsay, or excerpts. (3-24-05)~~

~~b. The board may take notice of any facts that could be judicially noticed in the courts of this state, and generally recognized technical or scientific facts within the board's specialized knowledge. (3-24-05)~~

~~c. The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (3-24-05)~~

~~d. The board may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds. (3-24-05)~~

~~e. The board is not obligated to accept or review oral statements or documents, other than those of the victim. (3-24-05)~~

~~f. All other evidence may be admitted. (3-24-05)~~

~~02. Review. The board's review for VSP designation is conducted in executive session pursuant to Section 18-8315, Idaho Code. The board may authorize individuals to attend a designated period of the executive session. (3-24-05)~~

~~03. Teleconference. A review conducted by teleconference is permitted. (3-24-05)~~

**171. DEMONSTRATION OF HIGH RISK.**

~~The board determines if a prima facie case exists to justify the sexual offender's designation as a VSP. A sexual offender shall be designated as a VSP if his risk of re-offending sexually or threat of violence is of sufficient concern to warrant the designation for the safety of the community. (3-24-05)~~

**172. BOARD VOTE.**

~~The board reviews documentation and makes a determination whether a sexual offender presents a high risk of re-offense, and whether the sexual offender should be designated as a VSP. (3-24-05)~~

~~01. Member Exclusion. A board member who has had prior association with the sexual offender being reviewed is excluded from the discussion and voting process on that offender. (3-24-05)~~

~~02. Vote. A majority vote to designate a sexual offender is required. (3-24-05)~~

~~a. Votes are taken and recorded in executive session pursuant to Section 18-8315, Idaho Code. (3-24-05)~~

~~b. Votes of individual members are not public record. (3-24-05)~~

~~03. Decision. (3-24-05)~~

~~a. The board may conclude from the evidence that the sexual offender has or probably has a mental abnormality or personality disorder, causing or contributing to the sexual offender's risk of re-offense. (3-24-05)~~

~~b. The board may designate a sexual offender as a VSP with or without a finding of mental abnormality or personality disorder. (3-24-05)~~

~~e. The decision of the board is recorded in the minutes of the regular meeting. (3-24-05)~~

~~d. The results of any designation action may be requested by submitting a public record request to the board. (3-24-05)~~

**~~173. FINDINGS.~~**

~~The board makes written findings that include the risk assessment; the reasons upon which the risk assessment was based; the determination whether the sexual offender should be designated as a VSP; and the reasons upon which the determination was based. (3-24-05)~~

**~~174. NOTICE OF DESIGNATION AS A VIOLENT SEXUAL PREDATOR.~~**

~~Pursuant to Sections 18-8319(2) and 18-8320, Idaho Code, the sexual offender, the sheriff of the county where the sexual offender resides or intends to reside upon release, the central registry, and the IDOC are notified of the offender's designation as a VSP. Notice is in the form of the board's written findings. (3-24-05)~~

**~~175.—189. (RESERVED)~~**

**~~190. JUDICIAL REVIEW.~~**

~~A sexual offender designated as a VSP has the right to judicial review of the designation, pursuant to Section 18-8321, Idaho Code. A request for judicial review must be filed with the courts no more than fourteen (14) calendar days after receiving the "Notice of Designation as a VSP" from the board. (3-24-05)~~

**~~191.—199. (RESERVED)~~**

**~~200. VICTIMS.~~**

~~The board respects and complies with the rights of victims as identified in Section 19-5306, Idaho Code, and Article I, Section 22, Idaho Constitution. (3-24-05)~~

**~~201. LOCATING VICTIMS.~~**

~~01. **Attempt to Locate.** The board shall make a good faith effort to locate the victim of the sexual offender's crime of conviction. The purpose for this effort is to inform the victim of the sexual offender's referral for VSP designation review. (3-24-05)~~

~~02. **Methods.** In effort to locate the victim, the board may use information contained in IDOC or Commission for Pardons and Parole records, telephone directories, or contact with the county where the case was tried. (3-24-05)~~

~~03. **Decision.** If the victim has been located, the board shall notify the victim of the VSP designation action. (3-24-05)~~

~~04. **No Contact.** The board respects the right of the victim to not be contacted. (3-24-05)~~

**~~202. VICTIM PARTICIPATION.~~**

~~The victim, person representing the victim, or both, is afforded an opportunity to testify or submit written documents for consideration by the board. (3-24-05)~~

~~01. **Meeting.** The victim, person representing the victim, or both, is permitted to attend the portion of the executive session review that pertains to the associated sexual offender. The chairman has discretion to limit the allotted time for testimony. The victim, person representing the victim, or both, is excluded during any board discussion or vote. (3-24-05)~~

~~a. The victim, person representing the victim, or both, is permitted to review documents not restricted by law, that are being considered as evidence by the board. (3-24-05)~~

~~b. Before taking testimony from the victim, the board shall use reasonable means to verify the identity~~

~~of the victim, person representing the victim, or both, or to verify the authenticity of written statements. (3-24-05)~~

~~e. The board may exclude evidence if the board determines the evidence is irrelevant, unduly repetitive, unreliable, or excludable on constitutional or statutory grounds. (3-24-05)~~

~~02. **Victim Confidentiality Protected.** Communications between the board and victim, person representing the victim, or both, are confidential. Information identifying the victim or the location of the victim is exempt from disclosure, pursuant to Section 18-8321(3)(a) and (b), Idaho Code. (3-24-05)~~

~~203~~**132.** -- 999. (RESERVED)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**ADDENDUM TO THE BEAR RIVER/MALAD SUBBASIN ASSESSMENT AND TMDLS**  
**(HUCS 16010102, 16010201, 1610202 & 16010204)**

**DOCKET NO. 58-0000-1103**

**NOTICE OF FINAL DECISION**

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Addendum to the Bear River/Malad Total Maximum Daily Loads (TMDLs).

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Addendum to the Bear River/Malad TMDLs. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Addendum to Bear River/Malad TMDLs addresses thirteen (13) assessment units (AUs) listed as impaired on Idaho's 2008 § 303(d) list. Delistings are proposed for several segments found to be in full support of water quality standards. DEQ completed TMDLs for all AU/pollutant combinations deemed water quality impaired. DEQ has submitted this TMDL document to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at [www.deq.idaho.gov/bear-river-basin-malad-river-subbasin](http://www.deq.idaho.gov/bear-river-basin-malad-river-subbasin) or by contacting Ms. Marti Bridges, TMDL Program Manager, 208-373-0382, [marti.bridges@deq.idaho.gov](mailto:marti.bridges@deq.idaho.gov).

Dated this 13th day of July, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1003

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the [Idaho Administrative Bulletin, May 4, 2011, Vol. 11-5, pages 78 through 82](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at <http://www.deq.idaho.gov/58-0101-1003-pending> or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Michael Simon at (208) 373-0212, [michael.simon@deq.idaho.gov](mailto:michael.simon@deq.idaho.gov).

Dated this 30th day of June, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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#### DOCKET NO. 58-0101-1003 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 11-5, May 4, 2011, pages 78 through 82](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.



# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1103

### 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. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**Wednesday, September 7, 2011, 3:30 p.m.**

**Department of Environmental Quality  
Conference Room B  
1410 N. Hilton, Boise, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2011.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. 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 October 2011 for adoption as a pending rule. The rule is expected to be final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

DEQ will submit the final rule to the United States Environmental Protection Agency to be included in the State Implementation Plan as required by Section 110 of the Clean Air Act.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Incorporation by reference is necessary to ensure that the state rules are consistent with federal regulations. Information for obtaining a copy of the federal regulations is included in the rule.

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

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov) or (208) 373-0440.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 7, 2011.

DATED this 8th day of July, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1103**

**008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.**

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)
- c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)
- d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)
- e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)
- f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section

7661c(b) or Sections 120 through 128 of these rules; (3-23-98)

**g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)

**h.** Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

**i.** Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

**j.** Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

**04. Designated Representative.** A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

**05. Draft Permit.** The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

**06. Emergency.** For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

**07. Final Permit.** The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

**08. General Permit.** A Tier I permit issued pursuant to Section 335. (3-23-98)

**09. Insignificant Activity.** Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

**10. Major Facility.** A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

**a.** For hazardous air pollutants: (3-23-98)

**i.** The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

**ii.** The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

**b.** For non-attainment areas: (3-23-98)

i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is “marginal” or “moderate,” one hundred (100) tpy or more, if the area is “serious,” fifty (50) tpy or more, if the area is “severe,” twenty-five (25) tpy or more, and if the area is “extreme,” ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-11-06)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

**11. Part 70.** Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2010, are hereby incorporated by reference. (4-7-11)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

**02. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

a. All federal publications: [U.S. Government Printing Office](#); and (4-7-11)

b. All documents herein incorporated by reference: (7-1-97)

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

**03. Documents Incorporated by Reference.** The following documents are incorporated by reference

into these rules:

(5-1-94)

**a.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR Part 51 revised as of July 1, 2010<sup>1</sup>. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (4-7-11)( )

**i.** All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

**ii.** Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

**b.** National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**c.** Approval and Promulgation of Implementation Plans, 40 CFR Part 52 revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**d.** Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**e.** Ambient Air Quality Surveillance, 40 CFR Part 58, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**f.** Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**g.** National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**h.** National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**i.** Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**j.** Permits, 40 CFR Part 72, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**k.** Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**l.** Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**m.** Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)

**n.** Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2010<sup>1</sup>, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. (4-7-11)( )

**o.** The final rule for Primary National Ambient Air Quality Standards for Sulfur Dioxide, 75 Fed. Reg. 35,520 through 35,603 (June 22, 2010) to be codified at 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards), 40 CFR Part 53 (Ambient Air Monitoring Reference and Equivalent Methods), and 40 CFR Part 58 (Ambient Air Quality Surveillance). This final rule is effective on August 23, 2010. (4-7-11)

**p.** The final rule for Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 through 31,608 (June 3, 2010) to be codified at 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), 40 CRF Part 52 (Approval and Promulgation of

Implementation Plans), and 40 CFR Part 70 (State Operating Permit Programs). This final rule is effective on August 2, 2010. (4-7-11)

**q.** The final rule for Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), 75 Fed. Reg. 64,864 through 64,907 (October 20, 2010) to be codified at 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and 40 CFR Part 52 (Approval and Promulgation of Implementation Plans). This final rule is effective on December 20, 2010. (4-26-11)T

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

### DOCKET NO. 58-0102-1101

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

**EFFECTIVE DATE:** The temporary rule is effective June 30, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., 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 August 19, 2011. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** As NPDES permits are coming up for renewal, the U.S. Environmental Protection Agency (EPA) has begun including thermal effluent limits in reissued permits. The City of Boise NPDES permit renewal is expected to be released as a draft in the summer of 2011 and will be based on current water quality standards unless they are revised promptly. Without this rule change, thermal effluent limits in NPDES permits and costs to meet those limits will be greater than needed to protect aquatic life resources.

Two parts of Idaho's water quality standards are likely to drive inordinate thermal treatment costs:

1. Excessive limits on water temperature rise in Subsections 401.01.c. and d. (aka thermal treatment requirements); and
2. Outdated numeric criteria to protect salmonid spawning.

DEQ proposes to revise the Water Quality Standards, IDAPA 58.01.02, in two sections addressing temperature: 1) the thermal treatment requirements in Subsections 401.01.c. and d. which limit the rise in water temperature due to wastewater treatment plants, and 2) site-specific criteria for water temperature in Section 278 to protect salmonid spawning.

The origin of Idaho's thermal treatment requirements is unknown but is thought to be based on avoiding 'thermal shock' to fish and providing a level of protection that is largely redundant of and far in excess of that provided by ambient criteria. While 'thermal shock' can be an issue for fish, it is thought to occur when fish encounter abrupt temperature changes of 5-6°C or more, not 1-2°C. DEQ proposes to remove Subsections 401.01.c. and d. and rely on the retained language in Subsections 401.01.a. and b. to provide a more flexible means to address possible thermal shock on a case-by-case basis and to provide full protection from adverse effects of heated effluent in addition to protection provided to aquatic life by ambient temperature criteria in Section 250.

Idaho's current salmonid spawning criteria are based on recommendations from EPA made in the mid 1970s. EPA updated its recommendation regionally in 2003. While DEQ would like to adopt this recommendation statewide, questions about time periods in which the criterion would apply in various waterbodies across the state has lead DEQ at this time to scale back to a site-specific proposal. DEQ proposes to adopt EPA's recommended criterion of 13°C as a maximum seven-day average of daily maximums as a site-specific criterion to protect salmonid spawning and incubation in the three waterbodies within the Lower Boise watershed (HUC 17050114) currently designated for salmonid spawning. The proposal specifies the time period for which the criterion applies to each waterbody and the species which are protected.

Although the rule is not expected to lower the level of protection of aquatic life, particularly fish populations, all Idahoans that recreate in, fish from or otherwise enjoy the quality of Idaho's surface waters may be interested in commenting on this proposed rule. Those most affected include NPDES permitted dischargers and citizens that pay for municipal sewage treatment, especially residents of the Treasure Valley. 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 November 2011 for adoption as a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of a temporary rule would reduce thermal treatment costs for pending NPDES permit renewals.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On May 4, 2011, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 11-5, pages 99 through 100](#), and a preliminary draft rule was made available for public review. A meeting was held on May 25, 2011. Several members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments received, and documents distributed during the negotiated rulemaking process is available at <http://www.deq.idaho.gov/58-0102-1101-temporary-proposed>.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the temporary and proposed rule, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 2, 2011.

DATED this 30th day of June, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton/Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 58-0102-1101**



278. LOWER BOISE RIVER SUBBASIN, HUC 17050114 SUBSECTION 1540.12.

01. **Boise River, SW-1 and SW-5 -- Salmonid Spawning and Dissolved Oxygen.** The waters of the Boise River from Veterans State Park to its mouth will have dissolved oxygen concentrations of six (6) mg/l or seventy-five percent (75%) of saturation, whichever is greater, during the spawning period of salmonid fishes inhabiting those waters. (3-15-02)

02. **Indian Creek, SW-3b, Mason Creek, SW-6, and Sand Hollow Creek, SW-17 -- Modified Aquatic Life Use.** All numeric criteria applicable to the seasonal cold water aquatic life use apply with the exception of dissolved oxygen. Dissolved oxygen concentrations are to exceed four (4) mg/l at all times. (3-15-02)

03. **Fifteenmile Creek, SW-7; Tenmile Creek, SW-8, and Five Mile Creek, SW-10 -- Modified Aquatic Life Use.** All numeric criteria applicable to the seasonal cold water aquatic life use apply. (3-15-02)

04. **Boise River, SW-5 and SW-11a -- Copper and Lead Aquatic Life Criteria.** The water-effect ratio (WER) values used in the equations in Subsection 210.02 for calculating copper and lead CMC and CCC values shall be two and five hundred seventy-eight thousandths (2.578) for dissolved copper and two and forty-nine thousandths (2.049) for lead. These site-specific criteria shall apply to the Boise River from the Lander St. wastewater outfall to where the channels of the Boise River become fully mixed downstream of Eagle Island. (5-3-03)

05. **Indian Creek, SW-3a -- Site-Specific Criteria for Water Temperature.** A maximum weekly maximum temperature of thirteen degrees C (13°C) to protect brown trout and rainbow trout spawning and incubation applies from October 15 through June 30. (6-30-11)T

06. **Boise River, SW-5 and SW-11a -- Site-Specific Criteria for Water Temperature.** A maximum weekly maximum temperature of thirteen degrees C (13°C) to protect brown trout, mountain whitefish, and rainbow trout spawning and incubation applies from November 1 through May 30. (6-30-11)T

07. **Point Source Thermal Treatment Requirement.** With regard to the limitations set forth in Section 401 relating to point source wastewater discharges, only the limitations of Subsections 401.01.a. and 401.01.b. and the temperature limitation relating to natural background conditions shall apply to discharges to any water body within the Lower Boise River Subbasin. (6-30-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.**

Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics: (4-11-06)

01. **Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)
  - a. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)
  - b. Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)
  - ~~e. If the water is designated for warm water aquatic life, the induced variation is more than plus two (+2) degrees C. (3-15-02)~~

~~d.~~ ~~If the water is designated for cold water aquatic life, seasonal cold water aquatic life, or salmonid spawning, the induced variation is more than plus one (+1) degree C.~~ (3-15-02)

~~ec.~~ If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then ~~Subsections 401.01.c. and 401.01.d. do not apply and instead~~ wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C. (4-11-06)(6-30-11)T

**02. Turbidity.** The wastewater must not increase the turbidity of the receiving water outside the mixing zone by: (7-1-93)

**a.** More than five (5) NTU (Nephelometric Turbidity Units) over background turbidity, when background turbidity is fifty (50) NTU or less; or (7-1-93)

**b.** More than ten percent (10%) increase in turbidity when background turbidity is more than fifty (50) NTU, not to exceed a maximum increase of twenty-five (25) NTU. (7-1-93)

**03. Total Chlorine Residual.** The wastewater must not affect the receiving water outside the mixing zone so that its total chlorine residual concentration exceeds eleven one-thousandths (0.011) mg/l. (1-1-89)

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

### DOCKET NO. 58-0102-1102

#### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., 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 August 19, 2011. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** DEQ proposes to revise its Water Quality Standards, IDAPA 58.01.02, to include a site-specific temperature criterion for the Snake River to protect fall spawning of Chinook salmon from Hell's Canyon Dam to the Salmon River. This site-specific criterion would be a change from the current criterion of a maximum weekly maximum of 13°C from October 23rd through April 15th to a site-specific criterion of a weekly maximum temperature (WMT) of 14.5°C from Oct 23rd through November 6th and a WMT of 13°C from November 7th through April 15th. The first date a WMT can be calculated is October 29th. The proposed rule change recognizes the declining thermal regime in the Snake River during the fall spawning season and that higher temperatures at the outset of the spawning season are both protective and supportive of the fall Chinook salmon spawning and incubation occurring in the Snake River during this time. This proposed rule change recognizes that a need to change the site-specific temperature criterion in the Snake River between the Hell's Canyon Dam and the confluence with the Salmon River exists. The current site-specific criterion of 13°C between October 23rd and April 15th is not regularly met during the first 14 days of the fall spawning season and yet salmonid spawning and incubation is at the highest levels of the last two decades. The proposed rule changes the temperature criteria to 14.5°C for the first 14 days of the spawning period and then reduced to 13°C for the balance of the fall and early spring.

All who fish and recreate in the Snake River, Idaho Power Company who operates the Hell's Canyon Dam, and Native American tribes may be interested in commenting on this proposed rule. 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 at the November 2011 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On June 1, 2011, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 11-6, pages 77 through 78](#), and a preliminary draft rule was made available for public review. A meeting was held on June 21, 2011. Several members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments received, and documents distributed during the negotiated rulemaking process is available at <http://www.deq.idaho.gov/58-0102-1102-proposed>.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 2, 2011.

DATED this 8th day of July, 2011.

Paula J. Wilson  
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Department of Environmental Quality  
1410 N. Hilton  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1102**

**286. SNAKE RIVER, SUBSECTION 130.01, HUC 17060101, UNIT S1, S2, AND S3; SITE-SPECIFIC CRITERIA FOR WATER TEMPERATURE.**

~~A maximum weekly maximum temperature of thirteen degrees C (13C) to protect fall chinook spawning and incubation applies from October 23rd through April 15th in the Snake River from Hell's Canyon Dam to the Salmon River. Weekly maximum temperatures (WMT) are regulated to protect fall chinook spawning and incubation in the Snake River from Hell's Canyon Dam to the confluence with the Salmon River from October 23 through April 15. Because the WMT is a lagged seven (7) day average, the first WMT is not applicable until the seventh day of this time period, or October 29. A WMT is calculated for each day after October 29 based upon the daily maximum temperature for that day and the prior six (6) days. From October 29 through November 6, the WMT must not exceed fourteen point five degrees C (14.5°C). From November 7 through April 15, the WMT must not exceed thirteen degrees C (13°C).~~ (4-6-05)( )

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-1101

### 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. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**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 August 17, 2011. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates the federal regulations incorporated by reference to include those revised as of July 1, 2011. In addition, this proposed rule includes corrections in Sections 005, 006, 011, and 018. In Section 005, the reference to the Permits and Enforcement division of the Department of Environmental Quality (DEQ) has been changed to Waste Management and Remediation Division. Sections 006, 011, and 018 have been revised as a result of technical corrections made to the federal regulations.

Groups interested in hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. 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 November 2011 for adoption as a pending rule. The rule is expected to be final and effective upon the conclusion of the 2012 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the DEQ to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

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

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact John Brueck at [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov) or (208)373-0458.

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 August 31, 2011.

Dated this 8th day of July, 2011.

Paula J. Wilson  
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Department of Environmental Quality  
1410 N. Hilton/Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0105-1101**

**002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2010<sup>1</sup>, including any notes and appendices therein, unless expressly provided otherwise in these rules. (4-7-11)( )

**01. Exceptions.** Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (5-8-09)

**02. Availability of Referenced Material.** The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

- a. U.S. Government Printing Office; and (4-7-11)
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010<sup>1</sup>. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. (4-7-11)( )

**005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts, except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010<sup>1</sup>. For purposes

of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.41(a), Regional Administrator shall be defined as U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification required under this section should also be sent to the Director. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), and 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. (47-H)( )

**01. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by EnviroSAFE Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

**a. Verification Testing Requirements.** Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

**b. Initial Verification Testing.** (3-16-96)

**i.** For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

**ii.** Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

**iii.** The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

**iv.** If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

**v.** CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

**vi.** For purposes of Subsections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

**c. Subsequent Verification Testing.** (3-16-96)

**i.** Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

**d. Delisting Levels.** (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

**e. Modification of Treatment Process.** (3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)



iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, [Permits and Enforcement Waste Management and Remediation Division](#), 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)( )

f. Records and Data Retention and Submittal. (3-16-96)

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

#### **006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.**

**01. Incorporation by Reference.** 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010<sup>1</sup>. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined as the U.S. Environmental Protection Agency ~~Region 10 Regional~~ Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.21, 262.51, 262.53, 262.54(e), 262.54(g)(1), ~~262.55, 262.56,~~ 262.60, and 262.85(g), EPA ~~or Environmental Protection Agency~~ shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States. (4-7-11)( )

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

#### **007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.**

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1,

2010~~1~~. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), “United States” shall be defined as the United States. (4-7-H)(    )

**008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010~~1~~. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71(a)(3) and 264.1082(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. (4-7-H)(    )

**009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, “The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part,” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010~~1~~. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71(a)(3) and 265.1083(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. (4-7-H)(    )

**010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.**

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010~~1~~. (4-7-H)(    )

**011. LAND DISPOSAL RESTRICTIONS.**

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010~~1~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) “EPA” shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.) ~~In 40 CFR 268.48(a), the entry for “2,4,6-Tribromophenol” is excluded.~~ (4-7-H)(    )

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010~~1~~. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. (4-7-H)(    )

**013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).**

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010~~1~~, except that 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. (4-7-H)(    )

**014. (RESERVED)**

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation by Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010<sup>1</sup>. For purposes of 40 CFR 279.43(c)(3)(ii) "Director" shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. (4-7-H)( )

**02. Used Oil as a Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

**a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

**b.** Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010<sup>1</sup>. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. (4-7-H)( )

**017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.**

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010<sup>1</sup>. (4-7-H)( )

**018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.**

40 CFR Part 267 and all Subparts, except 40 CFR 267.150, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2010<sup>1</sup>. (4-7-H)( )

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-1101

#### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Section 39-4405, 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 August 17, 2011. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to implement House Bill 93 (2011), wherein the Idaho Legislature revised the definition of "restricted hazardous waste" in Section 39-4403, Idaho Code. This proposed rule makes technical corrections and revises certain definitions in Section 010 as necessary for consistency with House Bill 93. In addition, this proposed rule updates the federal regulations incorporated by reference to include those revised as of January 1, 2011.

The Idaho Legislature enacted House Bill 93 to address the new definition of "byproduct material" enacted as part of the Federal Energy Policy Act of 2005 and to clarify that certain materials now included in this new definition could continue to be disposed of at a commercial hazardous waste disposal facility located in Idaho. This change in definition at the federal level would prohibit disposal of this material at a commercial hazardous waste disposal facility under the existing definition of "restricted hazardous waste." The amendment specifically clarifies that a facility could continue taking this waste, consistent with the Federal Energy Policy Act of 2005, which states that commercial hazardous waste facilities are authorized to continue accepting such waste.

The following groups may be interested in commenting on this proposed rule: Private industry; environmental groups; hazardous and nonhazardous waste disposal facilities; members of the public; and generators of radioactive materials specifically allowed for disposal by the U.S. Nuclear Regulatory Commission regulations contained in 10 CFR 20.2008(b). 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 November 2011 for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

This proposed rule updates the federal regulations incorporated by reference to include those revised as of January 1, 2011. Incorporation by reference is necessary because publication of the federal regulations in the rule would be unduly cumbersome and expensive. Information for obtaining a copy of the federal regulations is included in the rule.

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

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does regulate an activity not regulated by the federal government but is consistent with the legislative directive in House Bill 93 (codified at Section 39-4403, Idaho Code).

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact John Brueck at [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov) or (208)373-0458.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before August 31, 2011.

DATED this 8th day of July, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton, Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0110-1101**

**004. INCORPORATION BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 004.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-15-02)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (3-15-02)

- a. 10 CFR 30.14 through 30.16~~5~~, revised as of ~~July~~ January 1, 200~~1~~1. (~~3-15-02~~)(    )
- b. 10 CFR 30.18 through 30.21, revised as of ~~July~~ January 1, 200~~1~~1. (~~3-15-02~~)(    )
- c. 10 CFR 32.11, revised as of ~~July~~ January 1, 200~~1~~1. (~~3-15-02~~)(    )
- d. 10 CFR 32.18, revised as of ~~July~~ January 1, 200~~1~~1. (~~3-15-02~~)(    )
- e. 10 CFR 40.13, revised as of ~~July~~ January 1, 200~~1~~1. (~~3-15-02~~)(    )

**03. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (3-15-02)

- a. Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. (3-15-02)
- b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-15-02)
- c. U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

- 01. Accelerator-Produced Radioactive Material.** Any material made radioactive by ~~radiation from~~ *exposing it to the* a particle accelerator. (3-15-02)(    )
- 02. Board.** The Idaho Board of Environmental Quality. (3-15-02)
- 03. Byproduct Material.** Byproduct Material means: (3-15-02)
- a.** Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (3-15-02)
- b.** The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. (3-15-02)
- c.** Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or any material that: (    )
- i.** Has been made radioactive by use of a particle accelerator; and (    )
- ii.** Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and (    )
- d.** Any discrete source of naturally occurring radioactive material, other than source material, that: (    )
- i.** The U.S. Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium- 226 to the public health and safety or the common defense and security; and (    )
- ii.** Before, on, or after August 8, 2005, is extracted for use in a commercial, medical, or research activity. (    )
- 04. Department.** The Idaho Department of Environmental Quality. (3-15-02)
- 05. Exempt Quantities and Concentrations of Byproduct Materials.** Radioactive materials defined as exempt byproduct materials by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.16~~5~~, 10 CFR 30.18 through 30.21, 10 CFR 32.11 and 10 CFR 32.18) *in which the quantity and concentration of radionuclides are considered exempt from regulation.* (3-15-02)(    )
- 06. Naturally Occurring Radioactive Material (NORM).** Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)
- 07. Operator.** Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)
- 08. Owner.** Any person(s) who currently owns, or owned at the time of disposal, a hazardous waste

treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)

**09. Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. (3-15-02)

**10. Radioactive Material.** Radioactive Material includes: (3-15-02)

**a.** Technologically Enhanced Naturally Occurring Radioactive Material; (3-15-02)

**b.** ~~Accelerator Produced Radioactive Material~~ Byproduct material authorized for disposal pursuant to 10 CFR 20.2008(b); (~~3-15-02~~)(      )

**c.** Exempt Quantities and Concentrations of Byproduct Materials; (4-2-08)

**d.** Unimportant Quantities of Source Material; and (4-2-08)

**e.** Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been declared exempt from regulation under the Atomic Energy Act of 1954, as amended, for the purposes of disposal pursuant to 10 CFR 30.11, 10 CFR 40.14, 10 CFR 70.17. (4-2-08)

**11. Reasonably Maximally Exposed Individual.** That individual or group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. (3-15-02)

**12. Source Material.** Source material means: (3-15-02)

**a.** Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-15-02)

**b.** Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-15-02)

**i.** Uranium; (3-15-02)

**ii.** Thorium; or (3-15-02)

**iii.** Any combination thereof. (3-15-02)

**c.** Source material does not include special nuclear material. (3-15-02)

**13. Special Nuclear Material.** Special Nuclear Material means: (3-15-02)

**a.** Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-15-02)

**b.** Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-15-02)

**14. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).** Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)

**15. Unimportant Quantities of Source Material.** Radioactive materials defined as unimportant quantities of source materials by the U.S. Nuclear Regulatory Commission (10 CFR 40.13). (3-15-02)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.24 - STANDARDS AND PROCEDURES FOR APPLICATION OF RISK BASED CORRECTIVE ACTION AT PETROLEUM RELEASE SITES

DOCKET NO. 58-0124-1101

#### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Chapters 1, 36, 44, 72 and 74, Title 39, 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 August 17, 2011. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** DEQ rule chapter "Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites," IDAPA 58.01.24, was adopted by the Idaho Board of Environmental Quality in 2008 and approved by the Idaho Legislature in 2009. The rule requires that DEQ develop a guidance document to aid in implementation of the rule. During work group meetings for guidance development, the work group identified that the current state of the science regarding the methodologies describing how the toxicity data is used to calculate risk, particularly for inhalation exposures, had changed. The work group also concluded that the procedures and screening levels for risk evaluation of the vapor intrusion pathway, as delineated in the existing rule, did not meet current industry practice by omitting the use of soil vapor measurements. This rulemaking has been initiated to update portions of the rule that are pertinent to evaluation of petroleum release sites in order to promote consistent corrective action decision-making at these sites.

The proposed rule includes the following revisions:

1. Correct chemical toxicity values in Table 3 to conform to currently accepted standards;
2. Update the Screening Level values for soil and ground water in Table 2 using these updated toxicity values and current risk calculation methodologies;
3. Revise the Screening Level Table 2 by adding screening values for soil vapor measurements; and
4. Sections 200, 300, and 400 will be revised to incorporate the use of soil vapor into the risk evaluation process.

Cities, counties, bankers, lenders, realtors, petroleum marketers, consultants, and citizens of the state of Idaho may be interested in commenting on this proposed rule. 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 at the November 2011 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

While not part of this rulemaking, DEQ is also seeking public comment on the guidance document drafted to aid in implementation of this rule. The guidance document is titled "Draft Idaho Risk Evaluation Manual for Petroleum Releases" and may be obtained at [www.deq.idaho.gov/risk-evaluation-manual](http://www.deq.idaho.gov/risk-evaluation-manual). Submit written comments on the "Draft Idaho Risk Evaluation Manual for Petroleum Releases" by e-mail or fax to Bruce Wicherski at [bruce.wicherski@deq.idaho.gov](mailto:bruce.wicherski@deq.idaho.gov) or (208)373-0154 (fax number). DEQ will consider all written comments received on or before August 31, 2011.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On June 1, 2011, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 11-6, pages 142 through 143](#), and a preliminary draft rule was made available for public review. A meeting was held on June 23, 2011. One



member of the public participated in this negotiated rulemaking process by attending the meeting. A record of the negotiated rule drafts and documents distributed during the negotiated rulemaking process is available at <http://www.deq.idaho.gov/58-0124-1101-proposed>.

**IDAHO CODE SECTION 39-107D STATEMENT:** Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations. There is no federal law or regulation that is comparable to the Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites. Therefore, this proposed rule is not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which “proposes to regulate an activity not regulated by the federal government.” This rule does not propose to regulate an activity not regulated by the federal government. However, the rule does delineate a process that is not specifically delineated or required by the federal government. The following is a summary of additional information specified in Sections 39-107D(3) and (4), Idaho Code. DEQ previously addressed Sections 39-107D(3) and (4), Idaho Code, when this rule chapter was first promulgated in 2009 and is reiterating the information in this notice.

***Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.***

This rule delineates a process to evaluate the human health risks resulting from exposure to chemicals associated with petroleum releases. It is not known prior to the release of petroleum at a specific site which potential populations or receptors may be exposed. During the initial conservative screening portion of the process, it is assumed that the target populations at risk are residential receptors and sensitive subpopulations. In subsequent steps in the risk evaluation process described in the rule, site-specific determination of current and likely potential future receptors can be made.

***Section 39-107D(3)(b) and (c), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk.***

This rule describes a procedure for risk evaluation at petroleum release sites and requirements, both general and specific, for the site-specific estimation of risk. In the initial step of the risk evaluation process described by this rule, a screening level approach is utilized. The screening levels are compared to site media-specific petroleum chemical concentrations to determine the need for further evaluation or corrective action.

The screening levels were calculated using target cancer and non-cancer health risks in combination with specific parameter values for each of the variables in the standard equations used to calculate acceptable concentrations. For some factors central estimate values were used while for other factors an upper bound estimate was selected. The screening levels can be characterized as representing upper bound estimates of risk for residential receptors for the routes of exposure evaluated.

The more detailed risk evaluation process described in the rule allows the incorporation of site-specific data and assumptions, such as the likely future land use and receptors, into the risk calculation. The requirements for site-specific risk evaluation described in this rule specify 1) the acceptable cumulative risk and hazard that should apply at all sites and 2) that calculated risks should represent a reasonable maximum exposure scenario.

***Section 39-107D(3)(d), Idaho Code. Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty.***

There are a number of uncertainties in the risk evaluation process described in the rule. These include uncertainty in the estimation of exposure for specific receptors or populations, as well as uncertainty in the magnitude of effects associated with a specific dose of a chemical. The estimation of exposure is based on both environmental transport pathways from a petroleum release to a receptor, as well as on physiological and behavioral characteristics of the receptor.

Examples of physiological characteristics include body weight and breathing rate. Behavioral characteristics include such things as how much time a receptor spends outdoors each day, and how long a receptor lives at one location. Within a population there is variability in physiological and behavioral characteristics; uncertainty results

from lack of knowledge of the characteristics of current or future individuals who may be exposed to chemicals from a petroleum release. In the initial screening step of the risk evaluation process described in the rule, this uncertainty is addressed by utilizing values for these parameters from databases that are universally accepted in standard risk assessment practice. Many of the values selected for the screening step are upper-bound values from distributions in the databases, as the goal in this initial evaluation is to evaluate risk to residential and sensitive populations. In subsequent steps of the risk evaluation process, it is sometimes possible to collect site-specific data that can reduce uncertainty for a specific population. For example, there might be information available that allows a more accurate estimation of exposure frequency or duration, thereby reducing uncertainty for this population.

Uncertainty in environmental transport, such as the leaching of chemicals in soil to ground water, is related to the physical and chemical properties of the chemicals present in a petroleum release, as well as physical characteristics of the setting, such as depth to ground water. Parameter values from the scientific literature and accepted databases are utilized to assess environmental transport for the initial screening step of the process described in the rule. In the subsequent site-specific risk evaluation, collection of site-specific data is a powerful tool to reduce uncertainty, resulting in a better understanding of risks at the site.

Uncertainty in dose-response assessment is addressed by use of the best available toxicological data from databases which are universally recognized and accepted as part of standard risk assessment practice.

***Section 39-107D(3)(e), Idaho Code. Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.***

The referenced studies and analyses will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding health effects.

**REFERENCES:**

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**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Bruce Wicherski at [bruce.wicherski@deq.idaho.gov](mailto:bruce.wicherski@deq.idaho.gov) or (208)373-0246.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before August 31, 2011.

DATED this 8th day of July, 2011.

Paula J. Wilson  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0124-1101**

**005. AVAILABILITY OF REFERENCED MATERIAL.**

Documents and data bases referenced within these rules are available at the following locations: (5-8-09)

**01.** Idaho Risk Evaluation Manual for Petroleum Releases. Idaho Risk Evaluation Manual for Petroleum Releases and subsequent editions, <http://www.deq.idaho.gov>. ~~(5-8-09)~~( )

**02.** U.S. EPA RAGS. U.S. EPA RAGS, Volume 1, <http://www.epa.gov/oswer/riskassessment/policy.htm#5>. (5-8-09)

**03.** U.S. EPA Exposure Factors Handbook. U.S. EPA Exposure Factors Handbook, <http://www.epa.gov/ncea/pdfs/efh/front.pdf>. (5-8-09)

~~**04.** U.S. EPA IRIS Database. U.S. EPA IRIS Database. (5-8-09)~~

~~**05.** Idaho Source Water Assessment Plan. Idaho Source Water Assessment Plan, <http://www.deq.idaho.gov>. (5-8-09)~~

~~**06.** EPA Regional Screening Tables. EPA Regional Screening Tables, [http://www.epa.gov/reg3hwmd/risk/human/rb-concentration\\_table/index.htm](http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/index.htm). ( )~~

~~**07.** Provisional Guidance for Quantitative Risk Assessment of Polycyclic Aromatic Hydrocarbons. Provisional Guidance for Quantitative Risk Assessment of Polycyclic Aromatic Hydrocarbons. 1993. U.S. Environmental Protection Agency, Office of Research and Development, Office of Health and Environmental Assessment, Washington, DC, EPA/600/R-93/089. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**009. ACRONYMS.**

~~**01.** ATSDR. Agency for Toxic Substances and Disease Registry. (5-8-09)~~

~~**02.** EPA. The United States Environmental Protection Agency. (5-8-09)~~

~~**03.** IRIS. Integrated Risk Information System. (5-8-09)~~

~~**04.** NCEA. National Center for Environmental Assessment. (5-8-09)~~

~~**05.** PST. Petroleum Storage Tank System. (5-8-09)~~

~~**06.** RAGS. Risk Assessment Guidance for Superfund. (5-8-09)~~

~~**07.** UECA. Uniform Environmental Covenant Act. See definition in Section 010. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. RISK EVALUATION PROCESS.**

The following risk evaluation process shall be used for petroleum releases in accordance with the Petroleum Release Response and Corrective Action Rules described in IDAPA 58.01.02, "Water Quality Standards," Section 852. (5-8-09)

**01. Screening Evaluation.** The screening evaluation may be performed at any time during the release

response and corrective action process described in IDAPA 58.01.02, "Water Quality Standards," Section 852. The screening evaluation shall include, at a minimum: (5-8-09)

- a. Collection of media-specific (soil, surface water, ground water) data; and (5-8-09)
- b. Identification of maximum soil ~~and~~, ground water, and soil vapor petroleum chemical concentrations for the chemicals identified in Subsection 800.01 (Table 1) as appropriate for the petroleum product or products released. (~~5-8-09~~)(    )
- c. Comparison of the maximum media-specific petroleum contaminant concentrations to the screening levels identified in Subsection 800.02 (Table 2). If the maximum media-specific petroleum contaminant concentrations at a site do not exceed the screening levels, the owner and/or operator may petition for site closure, subject to other Department regulatory obligations. If the maximum media-specific concentrations at a site exceed the screening levels, the owner and/or operator shall proceed to: (5-8-09)
  - i. Adopt the screening levels as cleanup levels and develop a corrective action plan to achieve those levels pursuant to Subsection 200.03; or (5-8-09)
  - ii. Perform a site specific risk evaluation pursuant to Section 300. The Department may require the collection of additional site-specific data prior to the approval of the risk evaluation. (5-8-09)

**02. Results of Risk Evaluation.** If the results of the approved risk evaluation do not exceed the acceptable target risk level, acceptable target hazard quotient, or acceptable target hazard index specified in Section 300, the owner and/or operator may petition for site closure, subject to other Department regulatory obligations. If the results of the approved risk evaluation indicates exceedance of the acceptable target risk level, acceptable target hazard quotient, or acceptable target hazard index specified in Section 300, the risk evaluation shall: (5-8-09)

- a. Be modified by collection of additional site-specific data, or review of chemical toxicological information, and resubmitted to the Department for review and approval; or (5-8-09)
- b. Provide the basis for the development of risk based concentrations, establishment of remediation standards as described in Section 400, and development of a corrective action plan. (5-8-09)

**03. Development and Implementation of Corrective Action Plan.** A Corrective Action plan required as a result of the risk evaluation process described in Section 200 shall include, but not be limited to, the following information, as applicable: (5-8-09)

- a. Description of remediation standards, points of exposure, and points of compliance where remediation standards shall be achieved; (5-8-09)
- b. Description of remedial strategy and actions that will be taken to achieve the remediation standards; (5-8-09)
- c. Current and reasonably anticipated future land use and use of on-site and immediately adjacent off-site ground water, and surface water; (5-8-09)
- d. Activity and use limitations, if any, that will be required as part of the remedial strategy; (5-8-09)
- e. Proposed environmental covenants, developed to implement activity and use limitations, in accordance with Section 600; (5-8-09)
- f. Estimated timeline for completion; and (5-8-09)
- g. Monitoring Plan to monitor effectiveness of remedial actions. (5-8-09)
- h. Description of practical quantitation limits as they apply. (5-8-09)

- i. Description of background concentrations as they apply. (5-8-09)

**04. Department Review and Approval of Risk Evaluation or Corrective Action Plan.** Within thirty (30) days of receipt of the risk evaluation or corrective action plan, the Department shall provide in writing either approval, approval with modifications, or rejection of the risk evaluation or corrective action plan. If the Department rejects the risk evaluation or corrective action plan, it shall notify the owner and/or operator in writing specifying the reasons for the rejection. If the Department needs additional time to review the documents, it will provide written notice to the owner and/or operator that additional time to review is necessary and will include an estimated time for review. Extension for review time shall not exceed one hundred eighty (180) days without a reasonable basis and written notice to the owner and/or operator. (5-8-09)

**201. -- 299. (RESERVED)**

**300. SITE SPECIFIC RISK EVALUATION REQUIREMENTS.**

**01. General Requirements.** The general requirements for human health risk evaluations shall include, at a minimum: (5-8-09)

**a.** A conceptual site model which describes contaminant sources; release mechanisms; the magnitude, spatial extent, and temporal trends of petroleum contamination in all affected media; transport routes; current and reasonably likely future land use and human receptors; and relevant exposure scenarios. (5-8-09)

**b.** Toxicity Information derived from Subsection 800.03 (Table 3). (5-8-09)

**c.** Data quality objectives and sampling approaches based on the conceptual site model that support the risk evaluation and risk management process. (5-8-09)

**d.** Estimated exposure point concentrations for a reasonable maximum exposure based on a conservative estimate of the mean of concentrations of chemicals that would be contacted by an exposed receptor. (5-8-09)

**e.** Exposure analysis including identification of contaminants of concern, potentially exposed populations, pathways and routes of exposure, exposure point concentrations and their derivation, and a quantitative estimate of reasonable maximum exposure for both current and reasonably likely future land and water use scenarios. Appropriate reference sources of reasonable maximum exposure factor information may include, but are not limited to: (5-8-09)

i. U.S. EPA RAGS, Volume 1; (5-8-09)

ii. U.S. EPA Exposure Factors Handbook; (5-8-09)

iii. Idaho Risk Evaluation Manual [for Petroleum Releases](#); and ~~(5-8-09)~~( )

iv. Other referenced technical publications. (5-8-09)

**f.** Risk characterization presenting the quantitative human health risks and a qualitative and quantitative assessment of uncertainty for each portion of the risk evaluation. (5-8-09)

**g.** Risk evaluations may include the use of transport and fate models, subject to Department approval of the model and the data to be used for the parameters specified in the model. (5-8-09)

**02. Specific Requirements.** Human health risk evaluations shall, at a minimum: (5-8-09)

**a.** Utilize an acceptable target risk level as defined in Section 010; (5-8-09)

**b.** Utilize an acceptable target hazard index as defined in Section 010; (5-8-09)

- c. Utilize an acceptable target hazard quotient as defined in Section 010; (5-8-09)
- d. Evaluate the potential for exposure from: (5-8-09)
  - i. Ground water ingestion; (5-8-09)
  - ii. Direct contact with contaminated soils resulting from soil ingestion, dermal contact, and inhalation of particulates and vapors; (5-8-09)
  - iii. Indoor inhalation of volatile chemicals via volatilization of chemicals from soil, ground water, or free phase product; (5-8-09)
  - iv. Ingestion, inhalation, or dermal exposure to ground water and/or surface water which has been impacted by contaminants that have leached from the soils; and (5-8-09)
  - v. Other complete or potentially complete routes of exposure; (5-8-09)
- e. Evaluate the potential for exposure to: (5-8-09)
  - i. Adult and child residential receptors; (5-8-09)
  - ii. Adult construction and utility workers; (5-8-09)
  - iii. Aquatic life; (5-8-09)
  - iv. Recreational receptors; and (5-8-09)
  - v. Other relevant potentially exposed receptors; (5-8-09)
- f. Evaluate the potential for use of impacted ground water for ingestion based on: (5-8-09)
  - i. The current and historical use of the ground water for drinking water or irrigation; (5-8-09)
  - ii. The location and approved use of existing ground water wells in a one half (½) mile radius from the contaminated site at the release point; (5-8-09)
  - iii. The degree of hydraulic connectivity between the impacted ground water and other ground water bearing zones or surface water; and (5-8-09)
  - iv. The location of delineated source water protection areas for public drinking water systems. (5-8-09)

**301. -- 399. (RESERVED)**

**400. ESTABLISHMENT OF REMEDIATION STANDARDS.**

If, as a result of the assessment and risk evaluation completed as described in Section 300, it is determined that corrective action is required, remediation standards shall be established. The remediation standards established in these rules shall be no more stringent than applicable or relevant and appropriate federal and state standards and are consistent with Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. Section 9621) and Section 39-107D(2), Idaho Code, taking into consideration site specific conditions. These standards, and any activity use limitations proposed for the site, shall be established as part of a corrective action plan approved in writing by the Department. The standards may consist of the following. (5-8-09)

**01. Screening Levels.** The petroleum contaminant concentrations in soil ~~and~~, ground water, and soil vapor in Subsection 800.02 (Table 2). (5-8-09)( )

**02. Risk Based Levels.** Site-specific, media-specific petroleum contaminant concentrations

established in accordance with the risk evaluation procedures and requirements described in Section 300. (5-8-09)

**03. Generic Health Standards.** An established state or federal generic numerical health standard which achieves an appropriate health-based level so that any substantial present or probable future risk to human health or the environment is eliminated or reduced to protective levels based upon present and reasonably anticipated future uses of the site. (5-8-09)

**04. Other.** Remediation standards may be a combination of standards found in Subsections 400.01 through 400.03. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. TABLES.**

**01. Table 1.** Chemicals of Interest for Various Petroleum Products.

<b>CHEMICALS OF INTEREST FOR VARIOUS PETROLEUM PRODUCTS</b>				
<b>Chemical</b>	<b>Gasoline/ JP-4/ AVGas</b>	<b>Diesel/ Fuel Oil No. 2/ Kerosene</b>	<b>Fuel Oil No.4</b>	<b>Jet Fuels (Jet A, JP-5, JP-8)</b>
Benzene	X	X		X
Toluene	X	X		X
Ethyl benzene	X	X		X
Xylenes (mixed)	X	X		X
Ethylene Dibromide (EDB)	X <sup>1</sup>			
1,2 Dichloroethane (EDC)	X <sup>1</sup>			
Methyl Tert-Butyl Ether (MTBE)	X			
Acenaphthene		X	X	X
Anthracene		X	X	X
Benzo(a)pyrene		X	X	X
Benzo(b)fluoranthene		X	X	X
Benzo(k)fluoranthene		X	X	X
Benz(a)anthracene		X	X	X
Chrysene		X	X	X
Fluorene		X	X	X
Fluoranthene		X	X	X
Naphthalene	X	X	X	X
Pyrene		X	X	X
X <sup>1</sup> Leaded Regular Only				

(5-8-09)



02. Table 2. Residential Use Screening Levels.

RESIDENTIAL USE SCREENING LEVELS						
CHEMICALS	SOIL		GROUNDWATER			SOIL VAPOR <sup>e</sup>
	Screening Level [mg/kg]	Critical Pathway	Critical-Receptor Screening Level [mg/L]	Screening Level [mg/L] Critical Pathway	Critical-Pathway Basis for Ingestion Screening Level <sup>d</sup>	Basis for Ingestion-Target/Inhalation-Critical-Receptor <sup>d</sup> Screening Level [ $\mu\text{g}/\text{m}^3$ ]
Benzene	$1.78\text{E-}02$ 0.025	GWP <sup>a</sup>	GWP 0.005	$5.00\text{E-}03$ Ingestion	Ingestion MCL <sup>b</sup>	MCL <sup>b</sup> 31
Toluene	$4.89\text{E+}00$ 6.6	GWP	GWP 1.0	$1.00\text{E+}00$ Ingestion	Ingestion MCL	MCL 520,000
Ethylbenzene	$7.10\text{E-}02$ 0.25	<del>Subsurface Soil</del> Vapor Intrusion	Child 0.05	$1.07\text{E-}01$ Vapor Intrusion	Indoor Inhalation N/A	Age-Adjusted 97
Total Xylenes	$1.68\text{E+}00$ 27	<del>Subsurface Soil</del> Vapor Intrusion	Child 8.7	$4.46\text{E+}00$ Vapor Intrusion	Indoor Inhalation N/A	Child 10,000
Naphthalene	$7.8\text{E-}02$ 0.12	<del>Subsurface Soil</del> Vapor Intrusion	Age-Adjusted 0.07	$1.02\text{E-}01$ Vapor Intrusion	Indoor Inhalation N/A	Age-Adjusted 7.2
MTBE <sup>c</sup>	$6.70\text{E-}02$ 0.08	GWP	GWP 0.04	$3.10\text{E-}02$ Ingestion	Ingestion Risk-Based	Risk-Based 940
Ethylene dibromide (EDB)	$1.43\text{E-}04$ 0.0001	GWP	GWP 0.00005	$5.00\text{E-}05$ Ingestion	Ingestion MCL	MCL 0.4
1,2-Dichloroethane	$7.71\text{E-}03$ 0.013	<del>Subsurface Soil</del> GWP	Child 0.005	$5.00\text{E-}03$ Ingestion	Ingestion MCL	MCL 9.4
Acenaphthene	$5.23\text{E+}01$ 200	GWP	GWP 2.2	$6.26\text{E-}01$ Ingestion	Ingestion Risk-Based	Risk-Based N/A
Anthracene	$1.04\text{E+}03$ 3200	GWP	GWP 11	$3.13\text{E+}00$ Ingestion	Ingestion Risk-Based	Risk-Based N/A
Benz(a)anthracene	$4.22\text{E-}01$ 0.09	<del>Surficial Soil</del> GWP	Age-Adjusted 0.00003	$7.65\text{E-}05$ Ingestion	Ingestion Risk-Based	Risk-Based N/A
Benzo(a)pyrene	$4.22\text{E-}02$ 0.02	<del>Surficial Soil</del> Direct Contact	Age-Adjusted 0.0002	$2.00\text{E-}04$ Ingestion	Ingestion MCL	MCL N/A
Benzo(b)fluoranthene	$4.22\text{E-}01$ 0.2	<del>Surficial Soil</del> Direct Contact	Age-Adjusted 0.00003	$7.65\text{E-}05$ Ingestion	Ingestion Risk-Based	Risk-Based N/A
Benzo(k)fluoranthene	$4.22\text{E+}00$ 1.9	<del>Surficial Soil</del> Direct Contact	Age-Adjusted 0.0003	$7.65\text{E-}04$ Ingestion	Ingestion Risk-Based	Risk-Based N/A
Chrysene	$3.34\text{E+}01$ 9.5	GWP	GWP 0.003	$7.65\text{E-}03$ Ingestion	Ingestion Risk-Based	Risk-Based N/A

RESIDENTIAL USE SCREENING LEVELS						
CHEMICALS	SOIL		GROUNDWATER			SOIL VAPOR <sup>e</sup>
	Screening Level [mg/kg]	Critical Pathway	Critical-Receptor Screening Level [mg/L]	Screening Level [mg/L] Critical Pathway	Critical-Pathway Basis for Ingestion Screening Level <sup>d</sup>	Basis for Ingestion-Target/Inhalation-Critical-Receptor <sup>d</sup> Screening Level [ $\mu\text{g}/\text{m}^3$ ]
Fluoranthene	<del>3.64E+02</del> 1.400	GWP	<del>GWP</del> 1.5	<del>4.17E-01</del> Ingestion	<del>Ingestion</del> Risk-Based	<del>Risk-Based</del> N/A
Fluorene	<del>5.48E+01</del> 240	GWP	<del>GWP</del> 1.5	<del>4.17E-01</del> Ingestion	<del>Ingestion</del> Risk-Based	<del>Risk-Based</del> N/A
Pyrene	<del>3.59E+02</del> 1.000	GWP	<del>GWP</del> 1.1	<del>3.13E-01</del> Ingestion	<del>Ingestion</del> Risk-Based	<del>Risk-Based</del> N/A
a. Ground Water Protection Via Petroleum Contaminants in Soil Leaching to Ground Water						
b. Maximum contaminant level						
c. Methyl tert-butyl ether						
d. For the ingestion pathway, the source of the target level is indicated (MCL or a risk-based calculation); for the inhalation pathway the critical receptor is indicated (child or age-adjusted individual).						
e. Soil vapor measurements obtained at greater than 3-5 feet below ground surface.						

(5-8-09)( )

03. Table 3. Default Toxicity Values for Risk Evaluation.

DEFAULT TOXICITY VALUES FOR RISK EVALUATION									
CHEMICALS	CAS-Number <sup>a</sup>	Slope-Factor			Reference-Dose			Oral-RA <sup>b</sup> -Factor	Dermal-RA-Factor
		Oral (SF <sub>o</sub> )	Inhalation (SF <sub>i</sub> )	Oral (RfD <sub>o</sub> )	Inhalation (RfD <sub>i</sub> )				
CHEMICALS	CAS Number <sup>a</sup>	Oral Slope Factor (SF <sub>o</sub> ) (kg-day/mg)	Inhalation Unit Risk (IUR) ( $\mu\text{g}/\text{m}^3$ )	Oral Reference Dose (RfD <sub>o</sub> ) (mg/kg-day)	Inhalation Reference Concentration (RfC) (mg/m <sup>3</sup> )	Oral RA <sup>b</sup> -Factor (RAF <sub>o</sub> )	Dermal RA-Factor (RAF <sub>d</sub> )		
Benzene	71-43-2	0.055	<del>0.027</del> 7.8E-06	0.004	<del>0.0086</del> 0.03	1	<del>0.0005</del> 0		
Toluene	108-88-3	NA	NA	0.08	<del>4.43</del> 5.0	1	<del>0.03</del> 0		
Ethylbenzene	100-41-4	0.011	<del>0.009</del> 2.5E-06	0.1	<del>0.29</del> 1.0	1	<del>0.03</del> 0		

DEFAULT TOXICITY VALUES FOR RISK EVALUATION											
CHEMICALS	CAS-Number <sup>a</sup>	Slope-Factor			Reference-Dose			Oral-RA <sup>b</sup> -Factor	Dermal-RA-Factor		
		Oral (Sf <sub>o</sub> )		Inhalation (Sf <sub>i</sub> )	Oral (RfD <sub>o</sub> )		Inhalation (RfD <sub>i</sub> )				
CHEMICALS	CAS-Number <sup>a</sup>	Oral Slope Factor (SF <sub>o</sub> ) (kg-day/mg)	See table	(kg-day/mg) Inhalation Unit Risk (IUR) (ug/m <sup>3</sup> )	See table	Oral Reference Dose (RfD <sub>o</sub> ) (mg/kg-day)	See table	(mg/kg-day) Inhalation Reference Concentration (RfC) (mg/m <sup>3</sup> )	See table	Oral RA <sup>b</sup> Factor (RAF <sub>o</sub> )	Dermal RA Factor (RAF <sub>d</sub> )
Total Xylenes	1330-20-7	NA		NA		0.2	†	0.029 0.1	†	1	0.03 0
Naphthalene	91-20-3	NA		0.12 3.4E-05	€	0.02	†	0.00086 0.003	†	1	0.13
MTBE <sup>c</sup>	1634-04-4	0.0018	€	0.00004 2.6E-07	€	NA		0.86 3.0	†	1	0.0005 0
1,2-Dichloroethane	107-06-2	0.091	†	0.004 2.6E-05	†	NA 0.006		0.69 0.007	A I S D R	1	0.03 0
Ethylene Dibromide	106-93-4	2	†	2.4 6.0E-04	†	0.009	†	0.0026 0.009	†	1	0.03 0
Acenaphthene	83-32-9	NA		NA		0.06	†	NA		1	0.13
Anthracene	120-12-7	NA		NA		0.3	†	NA		1	0.13
Benz(a)anthracene	56-55-3	0.73	#	0.39 1.1E-04	€	NA		NA		1	0.13
Benzo(a)pyrene	50-32-8	7.3	†	3.9 1.1E-03	€	NA		NA		1	0.13
Benzo(b)fluoranthene	205-99-2	0.73	#	0.39 1.1E-04	€	NA		NA		1	0.13
Benzo(k)fluoranthene	207-08-9	0.073	#	0.39 1.1E-04	€	NA		NA		1	0.13
Chrysene	218-01-9	0.0073	#	0.039 1.1E-05	€	NA		NA		1	0.13
Fluoranthene	206-44-0	NA		NA		0.04	†	NA		1	0.13
Fluorene	86-73-7	NA		NA		0.04	†	NA		1	0.13
Pyrene	129-00-0	NA		NA		0.03	†	NA		1	0.13



**IDAPA 60 - IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION**

**60.05.04 - RULES GOVERNING ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS**

**DOCKET NO. 60-0504-1001**

**NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE**

**EFFECTIVE DATE OF RESCISSION:** The effective date of the rescission of the temporary rule is June 30, 2011.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted under this docket. The action is authorized pursuant to Sections 22-2718 and 22-2727, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule:

The temporary rule that was adopted and promulgated under Docket No. 60-0504-1001 and published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 513 through 516](#), and extended by Senate Concurrent Resolution 108 during the 2011 Legislative session, is hereby rescinded. This rescission is effective June 30, 2011. The temporary rule is being replaced by a new temporary rule that is being promulgated in this Bulletin following this notice. The effective date of the new temporary rule is July 1, 2011.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact to state general funds resulting from the rescission of this temporary rule.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule contact Kristin Magruder at (208) 332-1790.

DATED this 27th day of June, 2011.

Kristin Magruder  
Program Specialist  
Idaho Soil & Water Conservation Commission  
650 West State Street, Room 145  
Boise, Idaho 83702  
208-332-1790 (t)  
208-332-1799 (f)

# **IDAPA 60 - IDAHO SOIL & WATER CONSERVATION COMMISSION**

## **60.05.04 - RULES GOVERNING ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS**

### **DOCKET NO. 60-0504-1101 (NEW CHAPTER)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-2718 and 22-2727, 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 August 24, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Soil & Water Conservation Commission is directed by statute to promulgate rules for allocation of state funds to the local conservation districts. This temporary/proposed rule will allow the Commission to continue the adopted processes from last fiscal year for distributing funds this fiscal year prior to the legislature's review of the pending rule during the 2012 session.

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

This temporary rule (c) confers a benefit to the districts as early in the fiscal year as possible in order for them to continue operations and carry out responsibilities.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There is no fee being imposed or increased by this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is not a negative fiscal impact as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the allocation process was negotiated with all interested and affected parties prior to engaging in the rulemaking process. Additionally, there was the need to adopt the temporary rule prior to the start of the fiscal year 2012.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kristin Magruder, 208-332-1790.

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 August 24, 2011.

DATED this 27th day of June, 2011.

Kristin Magruder, Program Specialist  
Idaho Soil & Water Conservation Commission  
650 West State Street, Room 145  
Boise, Idaho 83702  
208-332-1790 (t) / 208-332-1799 (f)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 60-0504-1101**

**IDAPA 60**  
**TITLE 05**  
**CHAPTER 04**

**60.05.04 - RULES FOR ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS**

**000. LEGAL AUTHORITY.**

This chapter is adopted by the Idaho State Soil and Water Conservation Commission under the legal authority of Sections 22-2718 and 22-2727, Idaho Code. (7-1-11)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be known and cited as IDAPA 60.05.04, "Rules for Allocation of Funds to Conservation Districts." (7-1-11)T

**02. Scope.** These rules establish the procedures to be followed by the Commission and the conservation districts in the implementation of Section 22-2727, Idaho Code, providing for the allocation of state funds appropriated for distribution to conservation districts. (7-1-11)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (7-1-11)T

**003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeals before the Commission under this chapter. Persons may be entitled to appeal final agency actions authorized under this chapter pursuant to Section 67-5270, Idaho Code. (7-1-11)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. (7-1-11)T

**005. IDAHO PUBLIC RECORDS ACT.**

These rules are public records available for inspection and copying at the department. (7-1-11)T

**006. ADDRESS, OFFICE HOURS, TELEPHONE, AND FAX NUMBERS.**

**01. Physical Address.** The central office of the Idaho State Soil and Water Conservation Commission, 650 W State Street, Room 145, Boise, Idaho, 83702. (7-1-11)T

**02. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (7-1-11)T

**03. Telephone Number.** The telephone number of the Idaho State Soil and Water Conservation Commission at the central office is (208) 332-1790. (7-1-11)T

**04. Fax Number.** The fax number of the Idaho State Soil and Water Conservation Commission at the central office is (208) 332-1799. (7-1-11)T

**05. Website.** The Commission's website address is <http://www.swc.idaho.gov/>. (7-1-11)T

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

For the purpose of the rules contained in this chapter, the following definitions apply: (7-1-11)T

**01. Base Funding.** Funds appropriated to the Commission to be allocated equally to the various soil conservation districts in a sum not to exceed eight thousand five hundred dollars (\$8,500) per district per year. (7-1-11)T

**02. Board of Supervisors.** Governing body of a district as provided in Section 22-2717(25), Idaho Code. (7-1-11)T

**03. Certify.** To confirm formally as true, accurate, or genuine. (7-1-11)T

**04. Commission.** The Idaho State Soil and Water Conservation Commission as defined in Section 22-2718, Idaho Code. (7-1-11)T

**05. Conservation District or District.** A soil (and water) conservation district as defined in Section 22-2717, Idaho Code. (7-1-11)T

**06. Financial and Match Report.** Documentation certified by the Board of Supervisors that: (7-1-11)T

**a.** Itemizes local funds and services received by a district during the previous fiscal year; and (7-1-11)T

**b.** Describes how state base and match funds were utilized during the previous fiscal year. (7-1-11)T

**07. Fiscal Year.** As set forth in Section 67-2201, Idaho Code, the fiscal year will begin on July 1 and close on June 30 of the following year. (7-1-11)T

**08. Five (5) Year Plan.** The plan prepared by each district as defined in Section 025 of IDAPA 60.05.02, "Rules of the Antidegradation Plan for Agriculture for the Idaho Soil Conservation Commission and Soil Conservation Districts." (7-1-11)T

**09. Funding Criteria.** Criteria considered by the Commission to determine the amount of base and match funding to be allocated to the conservation districts. Criteria may include district budgets, district budget requests, district programs and work plans, and district work load analysis. The following documents may be required on an annual basis in order to consistently apply the criteria to all districts: (7-1-11)T

**a.** Five (5) year plans; (7-1-11)T

**b.** Financial and match reports; and (7-1-11)T

**c.** Performance reports. (7-1-11)T

**10. Local Funds.** Monies received in the previous fiscal year from local units of government and organizations for the general purposes of a conservation district. Funds received for special projects, used as required



match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. (7-1-11)T

**11. Local Services.** Non-cash contributions received in the previous fiscal year from local units of government and organizations for the general purposes of a conservation district. Services received for special projects, used as required match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. (7-1-11)T

**12. Local Units of Government.** Any general or special purpose political subdivision of the state which has the power to levy taxes and/or appropriate and spend funds. (7-1-11)T

**13. Match Funding.** Funds appropriated to the Commission for distribution to conservation districts in excess of base funding not to exceed twice the amount of local funds and services received by each district in the previous fiscal year. (7-1-11)T

**14. Maximum Allocation.** The total of base funding and match funding allocated to any one (1) conservation district shall not exceed fifty eight thousand and five hundred dollars (\$58,500) in a fiscal year. (7-1-11)T

**15. Organizations.** A group of two (2) or more persons structured and managed to pursue a collective goal on a continuing basis. (7-1-11)T

**16. Performance Report.** Documentation summarizing conservation activities, projects, and programs implemented by a conservation district during the previous fiscal year. (7-1-11)T

**011. ALLOCATION OF FUNDS TO DISTRICTS.**

**01. Base Funding.** The Commission shall determine the dollar amount to allocate equally to conservation districts on an annual basis. As soon as practicable after the start of the fiscal year, the Commission shall immediately distribute base funding to the districts that submitted the required documents during the previous fiscal year. (7-1-11)T

**02. Match Funding.** Following determination of base funding, the Commission shall review and approve the additional amount of state appropriations available for proportional allocation to each district in match funding. The amount of match funding allocated will be based upon local funds and services received in the previous fiscal year by each conservation district for the general purposes of the district. Funds received for special projects, used as required match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. Once the required documents for match funding are submitted and determined to be complete, the Commission shall distribute match funding to each district as soon as practicable. (7-1-11)T

**03. Required Documents.** The Commission may require submission of certain documents prior to allocation of base and match funding to districts. These documents may include five (5) year plans, financial and match reports, and performance reports. (7-1-11)T

**a.** The Board of Supervisors shall certify in writing that the district has examined all documentation submitted and that the statements and representations in the documents are true and accurate. (7-1-11)T

**b.** The district shall submit any required documents by a date established by the Commission. (7-1-11)T

**04. State Budget Requests.** The Commission shall conduct a public hearing to consider the needs of the conservation districts on or before June 15th of each year, giving twenty (20) days' written notice of the hearing to each conservation district and to all other persons requesting notice of the hearing. The Commission shall hear and consider testimony at the hearing and all information submitted by the districts prior to submission of the annual budget request to the legislature and governor based upon the criteria of Subsection 010.09 of this rule. (7-1-11)T

**012. -- 999. (RESERVED)**

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# LEGAL NOTICE

## Summary 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 latest publication of the state Administrative Bulletin.

*The written comment submission deadline is August 24, 2011, unless otherwise listed.  
(Temp & Prop) indicates the rule is both Temporary and Proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### IDAHO STATE DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701

**02-0214-1101, Rules for Weights and Measures.** Incorporates by reference the 2012 edition of the NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."

**02-0303-1101, Rules Governing Pesticide and Chemigation Use and Application.** Allows professional applicators to begin the chemigation application and then return at least once every 4 hours to check on the application rather than being physically on site during the entire pesticide application.

#### IDAPA 08 - STATE BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION PO Box 83720, Boise, ID 83720-0027

**08-0202-1101, Rules Governing Uniformity.** Updates the incorporation by reference of the Standards for Idaho School Buses and Operations (SISBO) manual to include changes to the school bus construction standards; driver's qualifications; school transportation operations at the local level; reimbursements; and the student transportation matrix.

#### IDAPA 09 - DEPARTMENT OF LABOR 317 W. Main Street, Boise, ID 83735

**09-0130-1101, Unemployment Insurance Benefits Administration Rules.** (Temp & Prop) Limits when a corporate officer can be personally eligible for unemployment insurance benefits; and allows claimants to file continued claim reports by facsimile or electronic mail.

**09-0135-1101, Unemployment Insurance Tax Administration Rules.** (Temp & Prop) Allows a corporation to exempt its corporate officers from unemployment insurance coverage and to reinstate corporate officers previously exempted. Corporations will not have to pay employment security contributions for exempt corporate officers and exempt corporate officers would not be eligible for unemployment insurance benefits.

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

**16-0202-1101, Rules of the Emergency Medical Services (EMS) Physician Commission.** Incorporates by reference the latest edition of the Commission's Standards Manual.

**16-0225-1101, Fees Charged by the State Laboratory.** Simplifies the fees for laboratory tests; allows the Bureau greater flexibility to respond to public health concerns; removes incorporations by reference and associated definitions.

**16.03.09 - Medicaid Basic Plan Benefits**

**16-0309-1102**, (Temp & Prop) Continues rule changes published as temporary rules under Docket 16-0309-1004 regarding changes in the definition for hospital floor reimbursement percentage and the reduction of outpatient hospital costs; updates statutory references.

**16-0309-1103**, (Temp & Prop) Conforms to HB 260 (2011 Legislature) by limiting benefits for Medicaid eligible participants' dental services.

**16-0309-1104**, (Temp & Prop) Implements statutory changes that continue the cost-savings measures passed in HB 260.

**16.03.10 - Medicaid Enhanced Plan Benefits**

**16-0310-1103**, (Temp & Prop) Conforms to HB 260 (2011 Legislature) by limiting benefits for Medicaid eligible participants' dental services.

**16-0310-1104**, (Temp & Prop) Implements HB 260 for nursing facilities and intermediate care facilities for people with intellectual disabilities by continuing reimbursement methodologies for mental health clinics, developmental disability agencies and rehabilitative mental health service providers that were implemented in 2010.

**16-0310-1105**, (Temp & Prop) Implements statutory changes that continue the cost-savings measures passed in HB 260.

**16-0313-1101, Consumer-Directed Services.** (Temp & Prop) Conforms to HB 260 by refining the developmental disabilities individual budget modification process and related requirements and criteria that will enable the Department to respond to requests for budget modifications only when health and safety issues are identified.

**IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY**

**350 N. 9th St. Ste. M-100, Boise, ID 83702**

**\*19-0101-1101, Rules of the Idaho State Board of Dentistry.** (\*PH) Corrects an unintended negative impact to licensees' continuing education requirements; deletes an unconstitutional advertising standard; corrects potential conflict in the dental hygienist rules of practice; and clarifies Board's role in approving dental assistant curriculum.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

**PO Box 83720, Boise, ID 83720-0063**

**24-0401-1101, Rules of the Idaho Board of Cosmetology.** Reduces fees for original licenses, annual renewals and permits for all people and entities licensed pursuant to Title 54, Chapter 8, Idaho Code.

**24-1001-1101, Rules of the State Board of Optometry.** (Temp & Prop) Implements SB 1137 (2011) by eliminating the ballot process for appointment of board members.

**24-1601-1101, Rules of the State Board of Dentistry.** Increases annual license renewal fee to \$750 to help balance the Board's annual budget and maintain the services necessary to protect the health and safety of the public.

**24-1901-1101, Rules of the Board of Examiners of Residential Care Facility Administrators.** (Temp & Prop) Revises the education and experience qualifications for licensure as a Residential Care Facility Administrator and gives Board discretion to accept other combinations of education and experience.

**24-2201-1101, Rules of the Idaho State Liquefied Petroleum Gas Safety Board.** Updates the incorporation by reference of the 2011 edition of the "Liquefied Petroleum Gas Code" to ensure current safety standards in the dispensing and storage of propane.

**24-2301-1101, Rules of the Speech and Hearing Services Licensure Board.** Implements HB 47 by allowing for and providing qualifications for licensure by endorsement and educational equivalency.

**24-2501-1101, Rules of the Idaho Driving Businesses Licensure Board.** Increases application fee to \$75; original instructor license and annual renewal fee to \$100, and original business license fee and the annual renewal fee to \$600.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT  
PO Box 7129, Boise ID 83707-1129**

**39-0203-1101, Rules Governing Vehicle Dealer's Principal Place of Business.** (Temp & Prop) Provides criteria for record types and allows records to be retained physically or electronically; allows for files to be stored off-site following 30-day notification to the department, with the provision that records must be produced within 3 business days upon request by the department; requires that electronic records be searchable, be kept secure preventing unauthorized access, and in such a manner that they cannot be altered.

**39-0247-1101, Rules Governing Revocation of Vehicle Registration for Failure to Comply With a Motor Vehicle Emission Inspection Ordinance.** Chapter repeal.

**39-0275-1101, Rules Governing Names on Drivers' Licenses and Identification Cards.** (Temp & Prop) Disallows issuance of a driver's license in one name and issuance of an identification card in another name; conforms to the one-person/one-record requirement for DMV Modernization; deletes the 26 character name limitation and provides for name formatting flexibility.

**39-0301-1101, Rules Governing Definitions Regarding Overlegal Permits.** (Temp & Prop) Changes chapter name; adds definitions for "Designated Agent" and "Overall Length"; changes "Escort Vehicle" to "Pilot Vehicle"; increases the length limit for vehicle combinations from 105 ft to 115 ft, per statute.

**39-0316-1101, Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads.** (Temp & Prop) Updates the farm exemptions for transporting farm implements between the farm and a repair/maintenance facility or a dealership/sales facility; allows motor carriers to use the industry standard 10-foot wide trailer to haul a non-reducible load smaller than 10-feet wide on the trailer; removes the 24-foot width restriction on the Interstate to reduce the impact on two-lane highways; deletes the 10-minute limit on interruption of traffic to eliminate any conflict with the traffic control plan provisions in another rule; requires permittee to submit a traffic control plan prepared by a licensed engineer or certified traffic control supervisor when operating on two-lane highways and exceeding specified dimensions.

**IDAPA 45 - IDAHO HUMAN RIGHTS COMMISSION  
317 W Main Street, Boise, ID 83735-0660**

**45-0101-1102, Rules of the Idaho Human Rights Commission.** Deletes unnecessary definitions; provides that state law on disability discrimination will be interpreted in compliance with the Americans with Disabilities Act and federal regulations; non-substantive changes increase clarity and replace references to "person" with "individual."

**IDAPA 54 - OFFICE OF THE STATE TREASURER  
PO Box 83720, Boise, ID 83720-0091**

**54-0101-1101, Reports for Public Bond Issues.** (Temp & Prop) Chapter repeal.

**IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD  
1299 N Orchard St Suite 110, Boise, ID 83706**

**57-0101-1101, Rules of the Sexual Offender Management Board.** (Temp & Prop) SB 1154a eliminated the Sexual Offender Classification Board and created the Sexual Offender Management Board to assume some of the responsibilities of the previous board; removes statutory references to the Violent Sexual Predator designation procedures; changes Board name and eliminates procedures for a VSP designation process that is no longer in place.

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

**58-0101-1103, Rules for the Control of Air Pollution in Idaho.** (\*PH) Updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2011. Comment by: 9/7/11.

**58.01.02 - Water Quality Standards**

**58-0102-1101,** (Temp & Prop) Revises limits on water temperature rise (aka thermal treatment requirements -

Subsections 401.01.c. and d.) which limit the rise in water temperature due to wastewater treatment plants; and uses site-specific criteria for water temperature in Section 278 to protect salmonid spawning. Comment by: 9/2/11.

**58-0102-1102**, Revisions include a site-specific temperature criterion for the Snake River to protect fall spawning of Chinook salmon from Hell's Canyon Dam to the Salmon River. Comment by: 9/2/11.

**58-0105-1101, Rules and Standards for Hazardous Waste.** Updates the federal regulations incorporated by reference to include those revised as of July 1, 2011; makes technical corrections. Comment by: 8/31/11.

**58-0110-1101, Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended.** Implements HB 93 (2011) by revising the definition of "restricted hazardous waste" as well as other definitions; makes technical corrections; and updates the federal regulations incorporated by reference to include those revised as of January 1, 2011. Comment by: 8/31/11.

**58-0124-1101, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites.** Corrects chemical toxicity values in Table 3 to conform to currently accepted standards; updates the Screening Level values for soil and ground water in Table 2 using updated toxicity values and current risk calculation methodologies; revises the Screening Level Table 2 by adding screening values for soil vapor measurements; and incorporates the use of soil vapor into the risk evaluation process. Comment by: 8/31/11.

**IDAPA 60 - IDAHO SOIL & WATER CONSERVATION COMMISSION**  
**650 West State Street, Room 145, Boise, ID 83702**

**60-0504-1101, Rules Governing Allocation of Funds to Conservation Districts.** (Temp & Prop) Establishes the procedures for the allocation of state funds to the local soil and water conservation districts.

**RULES ADOPTED AS TEMPORARY ONLY**

**Idaho Human Rights Commission**

**45-0101-1101**, Rules of the Idaho Human Rights Commission.

**SCHEDULED NEGOTIATED RULEMAKING MEETINGS**

**State Board of Education**

**08-0203-1102**, Rules Governing Thoroughness

Please refer to the Idaho Administrative Bulletin, [August 3, 2011, Volume 11-7](#), for notices and text of all rulemakings, public hearings and negotiated meeting schedules, Governor's executive orders, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at [adminrules.idaho.gov](http://adminrules.idaho.gov).*

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306  
Phone: 208-332-1820; Fax: 332-1896; Email: [rulescoordinator@adm.idaho.gov](mailto:rulescoordinator@adm.idaho.gov)

# **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*July 1, 1993 -- Present*

## **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

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

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# **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*April 7, 2011 -- August 3, 2011*

*(eff. \*PLR) - Final Rule Adoption Date Pending Legislative Review And Approval*

*(eff. date)L - Denotes Adoption by Legislative Action*

*(eff. date)T - Temporary Rule Effective Date*

*SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)*

*HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)*

*(This Abridged Index includes rules promulgated before April 7, 2011 that have not been  
adopted as final rules and all rulemakings being promulgated after April 7, 2011 - Sine Die.)*

***IDAPA 02 -- DEPARTMENT OF AGRICULTURE***

***02.02.14, Rules for Weights and Measures***

**02-0214-1101** Proposed Rulemaking, Bulletin Vol. 11-8

***02.03.03, Rules Governing Pesticide and Chemigation Use and Application***

**02-0303-1101** Proposed Rulemaking, Bulletin Vol. 11-8

***02.04.14, Rules Governing Dairy Waste***

**02-0414-0902** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-10

***02.04.18, Rules Governing CAFO Site Advisory Team***

**02-0418-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-7

***02.04.20, Rules Governing Brucellosis***

**02-0420-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 5-1-11)T

***02.04.30, Rules Governing Nutrient Management***

**02-0430-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-7

***02.04.32, Rules Governing Poultry Operations***

**02-0432-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-7

***02.04.33, Rules Governing Milk and Cream Procurement and Testing***

**02-0433-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-7

***02.06.13, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho***

**02-0613-0801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-9

**02-0613-0801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-10

**02-0613-0801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-11

***IDAPA 08 -- IDAHO STATE BOARD OF EDUCATION AND  
STATE DEPARTMENT OF EDUCATION***

***08.02.02, Rules Governing Uniformity - State Board of Education Rules***

**08-0202-1101** Proposed Rulemaking, Bulletin Vol. 11-8

***08.02.03, Rules Governing Thoroughness - State Board of Education Rules***

**08-0203-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-7 (eff. 5-18-11)T

**08-0203-1102** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-8

***IDAPA 09 -- IDAHO DEPARTMENT OF LABOR***

***09.01.30, Unemployment Insurance Benefits Administration Rules***

**09-0130-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. 7-1-11)T

***09.01.35, Unemployment Insurance Tax Administration Rules***

**09-0135-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. 7-1-11)T

***IDAPA 10 -- IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS***

***AND PROFESSIONAL LAND SURVEYORS***

***10.01.01, Rules of Procedure***

- 10-0101-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
- 10-0101-1101** Proposed Rulemaking, Bulletin Vol. 11-7

***10.01.02, Rules of Professional Responsibility***

- 10-0102-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
- 10-0102-1101** Proposed Rulemaking, Bulletin Vol. 11-7

***10.01.04, Rules of Continuing Professional Development***

- 10-0104-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
- 10-0104-1101** Proposed Rulemaking, Bulletin Vol. 11-7

***IDAPA 11 -- IDAHO STATE POLICE***

***11.05.01, Rules Governing Alcohol Beverage Control***

- 11-0501-1101** Temporary Rulemaking, Bulletin Vol. 11-7 (eff. 7-6-11)T

***IDAPA 15 -- OFFICE OF THE GOVERNOR***

***Executive Orders of the Governor***

Executive Order No. **2011-01** Bulletin Vol. 11-5

Executive Order No. **2011-02** Bulletin Vol. 11-5

***IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE***

***16.01.01, Emergency Medical Services (EMS) -- Advisory Committee (EMSAC)***

- 16-0101-1101** Proposed Rulemaking (New Chapter), Bulletin Vol. 11-7

***16.01.07, Emergency Medical Services (EMS) -- Personnel Licensing Requirements***

- 16-0107-1101** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 11-7 (eff. 7-1-11)T
- 16-0107-1102** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 11-7 (eff. 7-1-11)T

***16.01.12, Emergency Medical Services (EMS) -- Complaints, Investigations, and Disciplinary Actions***

- 16-0112-1101** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 11-7 (eff. 7-1-11)T

***16.02.02, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission***

- 16-0202-1101** Proposed Rulemaking, Bulletin Vol. 11-8

***16.02.03, Rules Governing Emergency Medical Services***

- 16-0203-0901** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-5
- 16-0203-0901** Temporary and Proposed Rulemaking, Bulletin Vol. 09-10 (eff. 7-1-09)T
- 16-0203-0901** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5
- 16-0203-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-3
- 16-0203-0901** Rescission and Vacation of Rulemaking, Bulletin Vol. 11-7 (eff. 7-1-11)
- 16-0203-1101\*** Temporary and Proposed Rulemaking, Bulletin Vol. 11-7 (eff. 7-1-11)T

\*Changes chapter name to: "Emergency Medical Services" from: "Rules Governing Emergency Medical Services"

***16.02.25, Fees Charged by the State Laboratory***

- 16-0225-1101** Proposed Rulemaking (Fee Rule), Bulletin Vol. 11-8

**16.03.01, Eligibility for Health Care Assistance for Families and Children**

- 16-0301-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T
- 16-0301-1003** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0301-1003** Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

**16.03.03, Rules Governing Child Support Services**

- 16-0303-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T
- 16-0303-1001** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0303-1001** Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

**16.03.04, Rules Governing the Food Stamp Program in Idaho**

- 16-0304-1004** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T
- 16-0304-1004** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0304-1004** Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

**16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)**

- 16-0305-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T
- 16-0305-1003** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0305-1003** Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)
- 16-0305-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. (7-1-11)T
- 16-0305-1101** Rescission of Temporary Rule/Vacation of Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T

**16.03.08, Rules Governing Temporary Assistance for Families in Idaho**

- 16-0308-1002** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T
- 16-0308-1002** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0308-1002** Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

**16.03.09, Medicaid Basic Plan Benefits**

- 16-0309-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
- 16-0309-1102** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T
- 16-0309-1103** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T
- 16-0309-1104** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T

**16.03.10, Medicaid Enhanced Plan Benefits**

- 16-0310-0902** Temporary and Proposed Rulemaking, Bulletin Vol. 09-1 (eff. 1-1-09)T
- 16-0310-0902** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 09-6
- 16-0310-0902** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5
- 16-0310-1004** Temporary Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T (Expires June 30, 2011)
- 16-0310-1005** Temporary and Proposed Rulemaking, Bulletin Vol. 10-11 (eff. 11-1-10)T
- 16-0310-1006** Notice of Agency Action Regarding The Adoption of Temporary Rules, Bulletin Vol. 10-11
- 16-0310-1006** Temporary Rulemaking, Bulletin Vol. 10-12 (eff. 1-1-11)T - *Expires June 30, 2011*
- 16-0310-1007** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. 1-1-11)T
- 16-0310-1101** Temporary Rulemaking, Bulletin Vol. 11-1 (eff. 9-1-10)T - (1-1-11)T - *Expires June 30, 2011*
- 16-0310-1102** Temporary Rulemaking, Bulletin Vol. 11-1 (eff. 10-1-10)T - *Expires June 30, 2011*
- 16-0310-1101** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0310-1102** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0310-0902** Rescission/Vacation of Rulemaking, Bulletin Vol. 11-6 (eff. 7-1-11)
- 16-0310-1005** Adoption of Pending Rule and Amendment to Temporary Rule, Bulletin Vol. 11-6 (eff. 11-1-10)T
- 16-0310-1007** Rescission of Temporary Rule/Vacation of Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T
- 16-0310-1101** Notice of Rescission of Temporary Rule, Bulletin Vol. 11-8 (eff. (7-1-11)T
- 16-0310-1103** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T
- 16-0310-1104** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T
- 16-0310-1105** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T

**16.03.13, Consumer-Directed Services**

- 16-0313-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. 7-1-11)T



***16.03.19, Rules Governing Certified Family Homes***

- 16-0319-1101** Notice of Public Meetings, Bulletin Vol. 11-5  
**16-0319-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-7 (eff. 7-1-11)T

***16.04.11, Developmental Disabilities Agencies (DDA)***

- 16-0411-1101** Adoption of Temporary Rule, Bulletin Vol. 11-1 (eff. 1-1-11)T (*Expires 6-30-11*)  
**16-0411-1101** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5

***16.05.04, Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding***

- 16-0504-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-7 (eff. 7-1-11)T

***16.06.02, Rules Governing Standards for Child Care Licensing***

- 16-0602-1101** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 11-7 (eff. 7-1-11)T

***16.06.12, Rules Governing the Idaho Child Care Program (ICCP)***

- 16-0612-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. 1-1-11)T  
**16-0612-1003** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5  
**16-0612-1003** Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

***IDAPA 19 -- BOARD OF DENTISTRY******19.01.01, Rules of the Idaho State Board of Dentistry***

- 19-0101-1101** Proposed Rulemaking, Bulletin Vol. 11-8

***IDAPA 20 -- DEPARTMENT OF LANDS******20.03.15, The Issuance of Geothermal Resource Leases***

- 20-0315-1101** Temporary Rulemaking, Bulletin Vol. 11-7 (eff. 7-1-11)T  
**20-0315-1102** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-7

***20.07.02, Conservation Of Crude Oil and Natural Gas in the State of Idaho***

- 20-0702-1101** Temporary Rulemaking, Bulletin Vol. 11-6 (eff. 4-19-11)T  
**20-0702-1102** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-7

***IDAPA 23 -- BOARD OF NURSING******23.01.01, Rules of the Idaho Board of Nursing***

- 23-0101-1002** Adoption of Temporary Rule, Bulletin Vol. 10-12 (eff. 11-5-10)T  
**23-0101-1002** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5  
**23-0101-1002** Proposed Rulemaking, Bulletin Vol. 11-6  
**23-0101-1002** Adoption of Pending Rule, Bulletin Vol. 11-8 (eff. \*PLR 2012)

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**30-0101-1101** Proposed Rulemaking, Bulletin Vol. 11-6

**30-0101-1101** Adoption of Pending Rule, Bulletin Vol. 11-8 (eff. \*PLR 2012)

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**35-0101-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 1-1-11)T

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- 39-0272-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 5-1-11)T

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- 39-0275-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. 7-1-11)T

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- 39-0301-1101\*** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. 7-1-11)T  
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- 45-0101-1101** Temporary Rulemaking, Bulletin Vol. 11-8 (eff. 5-24-11)T  
**45-0101-1102** Proposed Rulemaking, Bulletin Vol. 11-8

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- 54-0101-1101** Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 11-8 (eff. 7-1-10)T

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- 57-0101-1101\*** Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. 7-1-11)T  
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## ***IDAPA 58 -- DEPARTMENT OF ENVIRONMENTAL QUALITY***

- 58-0000-1101** Upper Snake Rock Subbasin TMDL (2000 & 2005) City of Twin Falls TSS Revision (HUC ID 17040212), Bulletin Vol. 11-2  
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**58-0101-1003** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-11  
**58-0101-1003** Proposed Rulemaking, Bulletin Vol. 11-5  
**58-0101-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 7-1-11)T  
**58-0101-1101** Adoption of Pending Rule and Temporary Rulemaking, Bulletin Vol. 11-6 (eff. 4-26-11)T  
**58-0101-1102** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 4-26-11)T  
**58-0101-1003** Adoption of Pending Rule, Bulletin Vol. 11-8 (eff. \*PLR 2012)  
**58-0101-1103** Proposed Rulemaking, Bulletin Vol. 11-8

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**58-0102-1103** Proposed Rulemaking, Bulletin Vol. 11-7  
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**58-0102-1102** Proposed Rulemaking, Bulletin Vol. 11-8

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- 58-0104-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-10  
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- 58-0105-1101** Proposed Rulemaking, Bulletin Vol. 11-8

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- 58-0120-1001** Proposed Rulemaking, Bulletin Vol. 11-6

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- 58-0124-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-6  
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**60-0504-1001** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5  
**60-0504-1001** Notice of Rescission of Temporary Rulemaking, Bulletin Vol. 11-8 (eff. 6-30-11)  
**60-0504-1101** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 11-8 (eff. 7-1-11)T

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