

# IDAPA 16 – IDAHO DEPARTMENT OF HEALTH AND WELFARE

## Division of Welfare

### 16.03.07 – Home Health Agencies

#### **Who does this rule apply to?**

*Home Health Agencies, administrators, directors, medical professionals, physicians, nurses, patients, families, guardians, and advocates of these patients, home health aides, therapists, therapy assistants, dietitians, social workers.*

#### **What is the purpose of this rule?**

*To establish standards for home health agencies, which is defined as any business entity that primarily provides skilled nursing services by licensed nurses and at least one (1) other health care service to a patient in that patient's place of residence. Any entity that has a provider agreement with the Department as a personal assistance agency that requires licensure as a home health agency only if it primarily provides nursing services.*

#### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statute passed by the Idaho Legislature:*

Health and Safety -

- [Section 39-2401\(2\), Idaho Code](#) – Home Health Agencies: Purpose and Authority

#### **Where can I find information on Administrative Appeals?**

*Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings."*

#### **How do I request public records?**

*Unless exempted, all public records are subject to disclosure by the Department that will comply with Title 74, Chapter 1, Idaho Code, upon requests. Confidential information may be restricted by state or federal law, federal regulation, and IDAPA 16.05.01, "Use and Disclosure of Department Records." Information received by the Department through filed reports, inspections, or as otherwise authorized under the law, will not be disclosed publicly in such a manner as to identify individual residents except as necessary in a proceeding involving a question of licensure. The Department will post on the Division of Licensing and Certification's website, survey reports, and findings of complaint investigations relating to a facility.*

#### **Who do I contact for more information on this rule?**

Idaho Department of Health and Welfare – Bureau of Facility Standards – Acute and Continuing Care Program  
450 W. State Street,  
Boise, ID 83702

P.O. Box 83720

Boise, ID 83720-0009

Phone: (208) 334-6226, option #4

Division of Licensing and Certification: (208) 364-1959

Home Health Hotline: Toll Free (800) 345-1453 / Fax: (208) 364-1888

Email: [fsb@dhw.idaho.gov](mailto:fsb@dhw.idaho.gov)

Webpages: <https://facilitystandards.idaho.gov> and <https://healthandwelfare.idaho.gov/Providers/Providers-Facilities/StateFederalPrograms/Non-LongTermCare/tabid/427/Default.aspx>

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## 16.03.07 – HOME HEALTH AGENCIES

### 000. LEGAL AUTHORITY.

Section 39-2401(2), Idaho Code, authorizes the Board to adopt rules for the operation of home health agencies (HHAs). (3-17-22)

### 001. WRITTEN INTERPRETATIONS.

This agency may have written statements that pertain to the interpretations of the rules of this chapter. (3-17-22)

### 002. -- 005. (RESERVED)

### 006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

**01. Confidential Records.** Information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (3-17-22)

**02. Public Records.** The Department will comply with Title 74, Chapter 1, Idaho Code, when requests for the examination and copying of public records are made. Unless exempted, all public records in Department custody are subject to disclosure. (3-17-22)

**03. Disclosure of Patient Identity.** Information received by the Department through filed reports, inspections, or as authorized under the law, will not be disclosed publicly so as to identify individual patients except as necessary in a proceeding involving a question of licensure. (3-17-22)

**04. Public Availability of Deficiencies.** The agency survey reports are available upon written request to the Department and posted on the Licensing and Certification website. (3-17-22)

### 007. -- 008. (RESERVED)

### 009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

**01. Compliance with Department's Criminal History and Background Check.** A home health agency (HHA) must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (3-17-22)

**02. Individuals Subject To Criminal History Checks.** Owners, administrators, employees, and contractors hired or contracted with after October 1, 2007, who have direct access to patients must complete and receive Department criminal history and background check clearance. (3-17-22)

**03. Availability to Work.** Any direct patient access individual hired or contracted on or after October 1, 2007, must complete an application before having access to patients and have their fingerprints submitted to the Department within twenty-one (21) days of completion of the notarized application. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any patient without a clearance by the Department. Once the notarized application is completed the individual can only work under supervision until the individual has been fingerprinted. (3-17-22)

### 010. DEFINITIONS.

**01. Board.** The Idaho Board of Health and Welfare. (3-17-22)

**02. Business Entity.** A public or private organization owned or operated by one (1) or more persons. (3-17-22)

**03. Department.** The Idaho Department of Health and Welfare. (3-17-22)

**04. Health Care Services.** Any of the following services that are provided at the residence of an individual: (3-17-22)

**a.** Skilled nursing services; (3-17-22)

**b.** Homemaker/home health aide services; (3-17-22)

**c.** Physical therapy services; (3-17-22)

- d. Occupational therapy services; (3-17-22)
- e. Speech therapy services; (3-17-22)
- f. Nutritional Services/Registered Dietitian Services; (3-17-22)
- g. Respiratory therapy services; (3-17-22)
- h. Medical/social services; (3-17-22)
- i. Intravenous therapy services; and (3-17-22)
- j. Such other services as authorized by rule of the Board. (3-17-22)

**05. Home Health Agency (HHA).** Any business entity that primarily provides skilled nursing services by licensed nurses and at least one (1) other health care service as defined in Subsection 010.04 to a patient in that patient's place of residence. Any entity that has a provider agreement with the Department as a personal assistance agency under Title 39, Chapter 56, Idaho Code, requires licensure as an HHA only if it primarily provides nursing services. (3-17-22)

**06. Individual.** A natural person who is a recipient of provided health care services. (3-17-22)

**07. Licensing Agency.** The Idaho Department of Health and Welfare. (3-17-22)

**08. Skilled Nursing Services.** Services provided directly by a licensed nurse for the purpose of promoting, maintaining, or restoring the health of an individual or to minimize the effects of injury, illness, or disability. (3-17-22)

**09. Voluntary Withdrawal.** (3-17-22)

**a.** Failure to submit an annual application and annual report will be considered a voluntary withdrawal as an HHA. (3-17-22)

**b.** When the agency has not provided home health services in the last calendar year, this will be considered a voluntary withdrawal as an HHA. (3-17-22)

**011. -- 012. (RESERVED)**

**013. LICENSURE - GENERAL REQUIREMENTS.**

For licensure, HHAs must meet all the requirements in Title 42, Chapter IV, Subchapter G, of the Code of Federal Regulations (CFR), Standards and Certification, Part 484. (3-17-22)

**01. Exception.** Entities whose sole payor source is the Department of Labor are exempt from meeting the federal Conditions of Participation but must meet the Department of Labor requirements for the provision of services for the Energy Workers Program and the requirements of their Accreditation Organization. These entities are required to submit survey results performed by the Accreditation Organization and the agency's Plan of Correction. (3-17-22)

**02. Types of Licensure.** (3-17-22)

**a.** A license is issued to an HHA found to be in substantial compliance with these rules. (3-17-22)

**b.** A provisional license is issued to an agency which is not found to be in substantial compliance with these rules. (3-17-22)

**03. Application for Licensure.** An application for a license must be made to the Department upon forms provided by it and contain such information as it reasonably requires, which includes affirmative evidence of

ability to comply with such reasonable standards, and rules as are lawfully adopted by the Board. (3-17-22)

**04. Issuance of License.** Upon receipt of a Department application, the Department will issue a license if the applicant meets the requirements established under this chapter. (3-17-22)

**a.** A license, unless suspended, revoked, or the agency has voluntarily withdrawn from the program is renewable each year upon filing by the licensee, and approval by the Department. (3-17-22)

**b.** Each license is issued only for the premises, persons, or governmental units in the application and is not transferable or assignable except with the written approval of the Department. (3-17-22)

**c.** Every agency must be designated by a distinctive name that cannot be changed without first notifying the Department in writing at least thirty (30) days prior to the date the proposed name change is to be effective. (3-17-22)

**d.** Licenses must be posted in a conspicuous place on the licensed premises. (3-17-22)

**05. Denial of Application.** Before denial is final, the Department will provide opportunity for a hearing and the owner of an HHA may appear and show cause why the license should not be denied. Hearings for denial will be conducted by the Department pursuant to the provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." The Department may deny any application when evidence exists that: (3-17-22)

**a.** Conditions endanger the health or safety of any patient; (3-17-22)

**b.** Conditions violate the patients' rights; (3-17-22)

**c.** The HHA does not meet requirements for licensure that hinders its ability to provide quality services; or (3-17-22)

**d.** The HHA owner has a history of repeat deficiencies. (3-17-22)

**06. Expiration Date and Renewal.** Each license to operate an HHA expires on the date designated on the license, unless suspended, revoked, or the agency has voluntarily withdrawn from the program. (3-17-22)

**07. Revocation of License.** The licensing agency may deny or revoke any license when persuaded by the evidence that the HHA: (3-17-22)

**a.** Has any existing conditions that endanger the health or safety or welfare of any patient. (3-17-22)

**b.** Has a history of repeat deficiencies. (3-17-22)

**c.** Has had licensure denied or revoked to operate a health or personal care facility or agency, has been convicted of operating without a license, or has been enjoined from operating such agency within two (2) years from the date of application. (3-17-22)

**d.** Lacks personnel sufficient in number or qualifications by training, experience, or judgment to properly service the proposed or actual number and type of patients. (3-17-22)

**e.** Has been guilty of fraud, deceit, or misrepresentation in the preparation of the application or other documents required by the licensing agency and dishonesty associated with the operation of a licensed HHA; (3-17-22)

**f.** Has been guilty of negligence, abuse, neglect, assault, or battery while associated with the provision of services in the operation of an HHA. (3-17-22)

- g.** Has refused to allow inspection of all records. (3-17-22)
- h.** Has lost federal certification. (3-17-22)
- 08. Suspension.** If the Department finds the public health, safety, or welfare requires emergency action, a license may be suspended pending proceedings for revocation or other action, and the HHA was found: (3-17-22)
- a.** Guilty of fraud, deceit, or misrepresentation in the preparation of the application or other documents required by the licensing agency and dishonesty associated with the operation of the HHA; (3-17-22)
- b.** Guilty of negligence, abuse, or neglect, assault, or battery while associated with the provision of services in the operation of an HHA. (3-17-22)
- 09. Return of License.** Each license is the property of the state of Idaho and must returned to the Department immediately upon license revocation or the agency has voluntarily withdrawn from the program. (3-17-22)
- 10. Appeal.** Before denial or revocation is final, the Department will provide opportunity for a hearing at which time the owner of an agency may appear and show cause why the license should not be denied or revoked. (3-17-22)
- 11. Injunction to Prevent Operation Without License.** Regardless of the existence or pursuit of any other remedy, the Department may maintain an action for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an agency without a license required under this chapter. The Department will be represented by the county prosecutor of the county in which the violation occurs or by the office of the attorney general. (3-17-22)
- 12. Inspection of Records.** The HHA and all records required under these rules must be accessible at any reasonable time to authorized representatives of the Department for the purpose of inspection with or without prior notice. Refusal to allow such access will result in revocation of the HHA's license. (3-17-22)
- 014. CHANGE OF ADMINISTRATOR OR LESSEE.**  
When a change of a licensed agency's ownership, administrator, lessee, title, or address occurs, the owner/ or administrator must notify the Department within thirty (30) days in writing. (3-17-22)
- 015. CHANGE OF OWNERSHIP.**  
A new owner must submit a new application for licensure and receive the license from the Department before operating the agency. A "change in ownership" is a change in the individual or legal organization that has final decision-making authority over the daily operation of an HHA. (3-17-22)
- 01. Change in Ownership.** An HHA must apply for a change of ownership when: (3-17-22)
- a.** The form of legal organization of the facility changes, such as when a sole proprietorship becomes a partnership or corporation; (3-17-22)
- b.** A transfer of the HHA's title changes from the current licensee to another party; (3-17-22)
- c.** The licensee is a partnership and an event occurs that dissolves the partnership; (3-17-22)
- d.** The licensee is a corporation; and (3-17-22)
- i.** The corporation is dissolved; (3-17-22)
- ii.** The corporation merges with another corporation which is the surviving corporation; or (3-17-22)
- iii.** A new corporation is formed through consolidation with one (1) or more other corporations.

(3-17-22)

e. A change of ownership or lessee, or establishment of a branch occurs.

**02. No Change in Ownership.** Ownership does not change when: (3-17-22)

a. The licensee contracts with another party to manage the facility and act as the licensee's agent, and the licensee retains final decision-making authority over daily operating decisions; or (3-17-22)

b. When the licensee is a corporation, some or all of its corporate stock is transferred, and the corporation continues to exist. (3-17-22)

**03. Application for Change of Ownership.** A HHA must apply to the Department for a change of ownership at least ninety (90) days prior to the proposed date of the change, using the initial licensing application form. (3-17-22)

**016. -- 069. (RESERVED)**

**070. DISCONTINUATION OF AGENCY.**

Upon determination the HHA will discontinue providing services, the agency is required to: (3-17-22)

**01. Provide Written Notice.** Provide written notice no less than thirty (30) days from the intended date of discontinuation of services to the: (3-17-22)

a. Patient or patient representative; and (3-17-22)

b. Department's Division of Licensing and Certification. (3-17-22)

**02. Provide Clinical Records.** Provide a copy of the patient's clinical records to: (3-17-22)

a. Patient or patient representative; and (3-17-22)

b. Any agency in which the patient or patient representative has elected to have their care transferred. (3-17-22)

**03. Inform Public.** Inform the public no less than thirty (30) days from the intended day of discontinuation of services by publishing a public notice in a media outlet prominent in the community of the HHA. (3-17-22)

**04. Ensure Confidentiality, Safekeeping, and Storage of Records.** (3-17-22)

a. The HHA will retain records for a period of not less than five (5) years and inform the Department of the location of said records; and (3-17-22)

b. Failure to store and protect said records may result in a referral to the Office of Civil Rights and other relevant agencies. (3-17-22)

**05. Discontinuation of Operation.** Agencies discontinuing operation must obtain approval of a plan to preserve or destroy clinical records prior to disposition. (3-17-22)

**06. Return License to the Department.** The HHA will return the license to the Department the day following the final day of operation. (3-17-22)

**071. ENFORCEMENT ACTIONS.**

Enforcement actions, as described in Sections 071 through 074 of these rules, are actions the Department can impose upon an agency. The Department will consider an agency's compliance history, change(s) of ownership, and the number, scope, and severity of the deficiencies when initiating or extending an enforcement action. (3-17-22)

**072. ENFORCEMENT ACTION OF A PROVISIONAL LICENSE.**

A provisional license may be issued when an agency has one (1) or more Conditions of Participation not met that limit the capacity of the HHA to furnish services of an adequate level and quality. (3-17-22)

**073. ENFORCEMENT ACTION OF SUMMARY SUSPENSION.**

When the Department finds that the agency's deficient practice(s) immediately place the health or safety of any residents in danger, the Department may take immediate action through summary suspension of the agency's license. (3-17-22)

**074. ENFORCEMENT ACTION OF A CONSULTANT.**

A consultant may be required, as a condition of a provisional license, to submit periodic reports to the Licensing Agency. (3-17-22)

**075. -- 994. (RESERVED)**

**995. WAIVERS.**

Pursuant to Section 39-2404, Idaho Code, waivers to these rules, may be granted by the Department as necessary, provided that granting the waiver does not endanger the health or safety or rights of any patient. The decision to grant a waiver is not to be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the Department. (3-17-22)

**996. -- 999. (RESERVED)**