

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.17 - RESIDENTIAL HABILITATION AGENCIES

DOCKET NO. 16-0417-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of these temporary rules is August 5, 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 Title 39, Chapter 46, and Sections 56-202, 56-203(7), 56-203(9), 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking has been scheduled for:

MONDAY, SEPTEMBER 19, 2011, 10:00 A.M.

**DHW Medicaid Office
3232 Elder
Conference Rm. D East and West
Boise, ID**

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 2006 legislative intent regarding selective contracting, and legislation passed by the 2011 Legislature under House Bill 260. The Department has eliminated the provider support services known as affiliation and replaced it with a contract for a waiver administrative function that will be referred to as Residential Habilitation Program Coordination for Certified Family Home (CFH) Providers. These rules clarify the certification requirements for residential habilitation agency providers, the health and safety critical incident reporting requirements, and certification enforcement procedures.

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

These rule changes protect the public health, safety, and welfare of Medicaid participants receiving residential habilitation agency services, and implement 2006 legislative intent regarding selective contracting and legislative 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: None.

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 fiscal impact of moving to a selective contract will be a total annual savings of \$3.7 million of which \$800,000 will be 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 Paige Grooms (208) 947-3364.

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 September 28, 2011.

DATED this 9th day of August, 2011.

Tamara Prisock
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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0417-1101

010. DEFINITIONS -- A THROUGH N.

For the purposes of these rules the following terms are used as defined below: (3-20-04)

01. Abuse. Any conduct of an employee, ~~affiliated residential habilitation provider~~ or contractor of an agency as a result of which a person suffers verbal aggression or humiliation, skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death, or the circumstances indicate that such condition or death, may not be the product of accidental occurrence under Section 39-5202, Idaho Code. ~~(3-20-04)~~(8-5-11)T

02. Administrator. The individual who is vested with primary responsibility for the direction and control of an agency, and who has power to legally bind the agency to contracts. (7-1-95)

03. Advocate. An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a person with developmental disabilities. A participant may act as his own advocate. (3-20-04)

04. Agency. Any business entity that directly provides ~~or affiliates with residential habilitation providers who provide~~ residential habilitation services under a Home and Community Based Services waiver for adults with developmental disabilities. ~~(7-1-95)~~(8-5-11)T

05. Appeal. A method to insure personal, civil and human rights by receiving, investigating, resolving, and documenting complaints related to the provision or termination of services of the residential habilitation services agency in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (7-1-95)

06. Audit. A methodical examination and review. (7-1-95)

07. Board. The Idaho ~~State~~ Board of Health and Welfare. ~~(7-1-95)~~(8-5-11)T

- 08. Business Entity.** A public or private organization owned or operated by one (1) or more persons. (7-1-95)
- 09. Certificate.** A permit to operate a residential habilitation agency. (7-1-95)
- 10. Certifying Agency.** ~~Regional~~ Units of the Department that conduct inspections and surveys and issue certificates based on the residential habilitation agency's compliance with this chapter. ~~(7-1-95)~~(8-5-11)T
- 11. Chemical Restraint.** The use of any medication that results or is intended to result in the modification of behavior without an accompanying behavior management program. (7-1-95)
- 12. Complaint Investigation.** An investigation of an agency to determine the validity of an allegation against it and to identify solutions to resolve conflicts between the complainant and the agency. (7-1-95)
- 13. Department.** The Idaho Department of Health and Welfare. (7-1-95)
- 14. Developmental Disability.** 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: (3-20-04)
- a.** Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-95)
- 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 (7-1-95)
- c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (7-1-95)
- 15. Deficiency.** A determination of non-compliance with a specific rule or part of a rule. (7-1-95)
- 16. Director.** Director of the Idaho Department of Health and Welfare or his designee. (7-1-95)
- 17. Exploitation.** An action which may include the misuse of a vulnerable participant's funds, property, services, or resources by another person for profit or advantage. (3-20-04)
- 18. Full Certificate.** A certificate issued by the Department to residential habilitation agencies complying with this chapter. (7-1-95)
- 19. Governing Authority.** The designated person or persons who assume full responsibility for the conduct and operations of the residential habilitation services agency. (7-1-95)
- 20. Government Unit.** The state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof. (7-1-95)
- 21. Guardian.** A legally-appointed person who has the care of the person or property of another, under Section 66-404, Idaho Code. (3-20-04)
- 22. Implementation Plan.** Written documentation of participants' needs, desires, goals and measurable objectives, including documentation of planning, ongoing evaluation, data-based progress and participant satisfaction of the program developed, implemented, and provided by the agency specific to the plan of service. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

100. CERTIFICATION -- GENERAL REQUIREMENTS.

01. Certificate Required. After, July 1, 1995, no person, firm, partnership, association or corporation within the state and no state or local public agency may operate, establish, manage, conduct or maintain a residential habilitation agency without first obtaining a valid certificate issued by the certifying agency of the Department. ~~No agency may provide services without a current certificate.~~ (3-20-04)(8-5-11)T

02. Application. An application for a certificate must be made to the ~~regional office of the~~ Department upon forms provided by ~~it~~ the Department and must contain ~~such~~ the required information ~~as it reasonably requires under Section 101 of these rules,~~ ~~that must~~ include ~~ing~~ affirmative evidence of ability to comply with such reasonable standards and rules as are lawfully adopted by the Board. (3-20-04)(8-5-11)T

~~02. Issuance—Full Certificate. Upon receipt of an application for certification, the certifying agency must issue a certificate if the applicant meets the requirements established under this chapter. A certificate to provide residential habilitation services must be issued specifically for the persons or governmental units named in the application and is not transferable or assignable except with written approval of the certifying agency. Every agency must be designated by a distinctive name in applying for a certificate, and the name must not be changed without first notifying the certifying agency in writing at least thirty (30) days prior to the date the proposed change in name is to be effective. Certificates must be posted in a conspicuous place on the certified premises.~~ (3-20-04)

03. Denial. The certifying agency may deny any application when persuaded by evidence that such conditions exist as to endanger the health or safety of any participant. (3-20-04)

a. Additional causes for denial of certificate may include: (7-1-95)

i. The residential habilitation agency does not meet the needs of participants as written on the plans of service or Implementation Plans which will violate the participants' rights; or (3-20-04)

ii. The residential habilitation agency does not meet requirements for certification to the extent that it hinders its ability to provide quality services that comply with the rules for residential habilitation agencies; or (7-1-95)

iii. The residential habilitation agency has a history of repeat deficiencies. (7-1-95)

b. Before denial is final, the certifying agency must provide the opportunity for a hearing at which time the owner or sponsor of an agency may appear and show cause why the certificate should not be denied. A waiver of a specific rule or standard may be granted by the certifying agency in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any participant. The decision to grant a waiver must not 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 certifying agency. Contested case hearings, including denial and revocation, must be conducted under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-20-04)

04. Revocation. The certifying agency may revoke any certificate when persuaded by the evidence that such conditions exist which endanger the health, safety, or welfare of any participant under the responsibility of the agency, or that the agency is not in substantial compliance with these rules. Additional causes for revocations of a certificate may include: (3-20-04)

a. The agency has a history of repeat deficiencies; ~~or~~ (7-1-95)(8-5-11)T

b. The agency has been denied or has had revoked any certificate to operate a health or residential habilitation agency or has been convicted of operating any residential habilitation agency without a certificate or has been enjoined from operating such agency within two (2) years from the date of application; ~~or~~ (7-1-95)(8-5-11)T

c. The agency lacks personnel sufficient in number or qualifications by training, experience, or judgment, to properly provide services to the proposed or actual numbers, and abilities and disabilities of participants;

- ~~or~~ (3-20-04)(8-5-11)T
- d. The agency has been guilty of fraud or deceit or misrepresentation in the preparation of the application or other documents required by the certifying agency; ~~or~~ (7-1-95)(8-5-11)T
- i. Has been guilty of fraud or deceit or misrepresentation or dishonesty associated with the operation of a certified residential habilitation agency; ~~or~~ (7-1-95)(8-5-11)T
- ii. Has been guilty of negligence or abuse or neglect or assault or battery while associated with the provision of services in its operation; ~~or~~ (7-1-95)(8-5-11)T
- e. The agency refuses to allow inspection of all residential habilitation records; ~~or~~ (7-1-95)(8-5-11)T
- f. The agency is not in substantial compliance with the provisions for services of participants' personal, civil or human rights outlined in Subsections 402.01.a. through 402.01.g.; or (3-20-04)
- g. When the Department finds the public health, safety, or welfare imperatively require emergency action, a certificate may be summarily suspended pending proceedings for revocation or other action. (7-1-95)

~~05. **Emergency Powers of the Director.** In the event of an emergency endangering the life or safety of a participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director must provide an opportunity for a hearing.~~ (3-20-04)

~~06. **Injunction to Prevent Operation Without Certificate.** Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state 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 certificate required under this chapter.~~ (7-1-95)

~~075. **Conformity.** Applicants for certification and certified residential habilitation agencies must conform to all applicable rules of the Department.~~ (3-20-04)

~~086. **Inspection of Residential Habilitation Records.** The residential habilitation agency 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 must result in revocation of the residential habilitation agency's certificate.~~ (3-20-04)

~~097. **Agency Provider Training.** The Department must assure that direct service providers of all residential habilitation service agencies receive ongoing training in the provision of services and supports to participants.~~ (3-20-04)

Section 101 has been moved and renumbered to proposed Section 104

101. CERTIFICATION - ISSUANCE OF CERTIFICATES.

The Department will conduct an initial survey upon receipt of a completed application. (8-5-11)T

01. **Initial Certificate.** When the Department determines that all application requirements have been met, an initial certificate is issued for a period of up to six (6) months from the initiation of services. During this six (6) month period, the Department evaluates the agency's ongoing capability to provide services and to meet the standards of these rules. The Department will resurvey the agency prior to the end of the initial certification period. (8-5-11)T

02. **Renewal of Certificate.** A certificate may be renewed by the Department when it determines the agency requesting recertification is in substantial compliance with the provisions of this chapter of rules. A certificate issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. (8-5-11)T

03. Provisional Certificate. When a residential habilitation agency is found to be out of substantial compliance with these rules, but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance to a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If the Department determines the agency is in compliance, a certificate will be issued. If the agency is determined to be out of compliance, the certificate will be denied or revoked. (8-5-11)T

04. Expiration of Certificate. An agency must request renewal of its certificate no less than ninety (90) days before the expiration of the certificate to ensure there is no lapse in certification. After initial certification the Department may issue a certificate that is in effect for up to three (3) years based upon an agency's substantial compliance with this chapter of rules. (8-5-11)T

102. CERTIFICATE NOT TRANSFERABLE.
The certificate is issued only to the agency named in the application, only for the period specified, and only to the owners or operators as expressed on the application submitted to the Department. The certificate may not be transferred or assigned to any other person or entity. (8-5-11)T

103. RETURN OF CERTIFICATE.
The certificate is the property of the state and must be returned to the state if it is revoked or suspended. (8-5-11)T

104. CHANGE OF OWNERSHIP, ADMINISTRATOR OR LESSEE.

01. Notification to Department. Because certificates are not transferable from one (1) individual to another or from one (1) lessee to another or from one (1) location to another, when a change of ownership, lease or locations is contemplated, the agency must be recertified and implement the same procedure as an agency that has never been certified. When a change of a certified agency's ownership, administrator, lessee, title, or address occurs, the owner or designee must notify the Department in writing. (3-20-04)

02. New Application Required. A new application must be submitted in the instance of a change of ownership or lessee to the certifying agency at least sixty (60) days prior to the proposed date of change. (7-1-95)

03. Arms Length Agreement. Because of the inherently close relationship between the lessee and the lessor, an application for change of ownership of an agency that is being leased from a person who is in litigation for failure to meet certification standards or who has had his certificate revoked, must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. (3-20-04)

105. -- 199. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

201. ADMINISTRATION.

01. Scope. Each residential habilitation agency must be organized and administered under one authority. If other than a single owner or partnership, the agency must have a governing board which assumes full legal responsibility for the overall conduct of the agency. (3-20-04)

02. Structure. The administrative responsibilities of the agency must be documented by means of a current organizational chart. (3-20-04)

03. Responsibilities. The governing authority must assume responsibility for: (3-20-04)

- a. Adopting appropriate organizational bylaws and policies and procedures; ~~and~~ (7-1-95)(8-5-11)T
- b. Appointing an administrator qualified to carry out the agency's overall responsibilities in relation to written policies and procedures and applicable state and federal laws. The administrator must participate in deliberation of policy decisions concerning all services; ~~and~~ (3-20-04)(8-5-11)T
- c. Providing a continuing and annual program of overall agency evaluation; ~~and~~ (7-1-95)(8-5-11)T
- d. Assuring that appropriate training, space requirements, support services, and equipment for ~~staff or affiliated~~ residential habilitation ~~providers~~ agency staff are provided to carry out assigned responsibilities; and (7-1-95)(8-5-11)T
- e. Cooperating in participating in a system by which to coordinate with other service providers continuity of the delivery of residential habilitation services in the plan of service. (3-20-04)

202. ADMINISTRATOR.

An administrator is responsible and accountable for implementing the policies and procedures approved by the governing authority. (3-20-04)

01. Administrator Qualifications. Each agency must have a designated administrator who: (3-20-04)

- a. Is at least twenty-one (21) years of age; ~~and~~ (7-1-95)(8-5-11)T
- b. Has satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-20-04)
- c. Has a minimum of three (3) years of experience in service delivery to persons with developmental disabilities with at least one (1) year having been in an administrative role. (7-1-95)

02. Absences. The administrator must designate, in writing, a qualified person to perform the functions of the administrator to act in his absence. (3-20-04)

03. Responsibilities. The administrator, or his designee, must assume responsibility for: (3-20-04)

- a. Developing and implementing written administrative policies and procedures which comply with applicable rules; ~~and~~ (7-1-95)(8-5-11)T
- b. Developing and implementing policies and procedures for agency staff and ~~affiliated residential habilitation~~ provider training, quality assurance, evaluation, and supervision; ~~and~~ (7-1-95)(8-5-11)T
- c. Conducting regular agency staff ~~and affiliated residential habilitation provider~~ meetings to review program and general participant needs and plan appropriate strategies for meeting those needs; ~~and~~ (3-20-04)(8-5-11)T
- d. Maintaining adequate financial accounting records according to government accepted accounting principles; ~~and~~ (7-1-95)(8-5-11)T
- e. Making all records available to the Department for review or audit; ~~and~~ (7-1-95)(8-5-11)T
- f. Developing and implementing a policy addressing safety measures to protect participants, ~~and~~ staff, ~~and affiliated residential habilitation providers~~ as mandated by state and federal rules; and (3-20-04)(8-5-11)T
- g. Ensuring that agency personnel, ~~and affiliated providers~~ including those providing services under arrangement, practice within the bounds set forth by the applicable state licensure boards. (7-1-95)(8-5-11)T

203. STAFF ~~AND AFFILIATED~~ RESIDENTIAL HABILITATION PROVIDER TRAINING.

Training must include orientation and ongoing training at a minimum as required under IDAPA 16.03.10, "Medicaid

Enhanced Plan Benefits,” Sections 700 through 706. Training is to be a part of the orientation training and is required initially prior to accepting participants. All required training must be completed within six (6) months of employment ~~or affiliation~~ with a residential habilitation agency and documented in the employee ~~or affiliated~~ residential habilitation provider record. The agency must ensure that all employees, ~~affiliated residential habilitation providers,~~ and contractors receive orientation training in the following areas: ~~(3-20-04)(8-5-11)T~~

- 01. Rights.** Personal, civil, and human rights. (7-1-95)
- 02. Disabilities.** Developmental disabilities commensurate with the skills of participants served. (3-20-04)
- 03. Understanding of Participants' Needs.** A basic understanding of the needs, desires, goals and objectives of participants served. (3-20-04)
- 04. Supervision.** Appropriate methods of supervision. (7-1-95)
- 05. Review of Services.** A review of the specific services that the participant requires. (3-20-04)
- 06. First Aid and CPR.** First aid, CPR, and universal precautions. (7-1-95)

(BREAK IN CONTINUITY OF SECTIONS)

301. PERSONNEL.

01. Policies. The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees, subcontractors or agents; ~~and training, supervision, and quality assurance for affiliated providers.~~ Written personnel policies must be on file and provided to employees ~~and affiliated residential habilitation providers~~ which describe the employee's ~~and affiliated residential habilitation provider's~~ rights, responsibilities, and agency's expectations. ~~(3-20-04)(8-5-11)T~~

02. Work Schedules. Coverage is scheduled to assure compliance with the Individual Support and Implementation Plans and all work schedules must be kept in writing. The agency must specify provisions and procedures to assure back-up coverage for those work schedules. (3-20-04)

03. Personnel Records. A record for each employee ~~and affiliated residential habilitation provider~~ must be maintained from date of hire ~~or affiliation~~ for not less than one (1) year after the employee ~~or affiliated residential habilitation provider~~ is no longer employed by the agency, and must include at least the following: ~~(3-20-04)(8-5-11)T~~

- a.** Name, current address and phone number of the employee; and (7-1-95)
- b.** Social Security number; and (7-1-95)
- c.** Education and experience; and (7-1-95)
- d.** Other qualifications (if licensed in Idaho, the original license number and the date the current registration expires, or if certificated, a copy of the certificate); and (7-1-95)
- e.** Date of employment ~~or affiliation~~; and ~~(7-1-95)(8-5-11)T~~
- f.** Position in the agency; and (7-1-95)
- g.** Date of termination of employment ~~or affiliation~~ and reason for termination, if applicable; and ~~(7-1-95)(8-5-11)T~~

- h.** Documentation of initial orientation and required training; and (7-1-95)
- i.** Evidence of current CPR and First Aid certifications; and (7-1-95)
- j.** Verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-20-04)
- k.** Evidence that the employee ~~or affiliated residential habilitation provider~~ has received a job description and understands his duties. (~~7-1-95~~)(8-5-11)T

(BREAK IN CONTINUITY OF SECTIONS)

402. PARTICIPANT RIGHTS.

01. Responsibilities. Each residential habilitation agency must develop and implement a written policy outlining the personal, civil, and human rights of all participants. The policy protects and promotes the rights of each participant and includes the following: (3-20-04)

- a.** Inform each participant, or legal guardian, of the participant's rights and the rules of the agency; (3-20-04)
- b.** Allow and encourage individual participants to exercise their rights as participants of the agency, and as citizens of the United States, including the right to file complaints, and the right to due process; (3-20-04)
- c.** Inform each participant, or legal guardian, of the services to be received, the expected benefits and attendant risks of receiving those services, and of the right to refuse services, and alternative forms of services available; (3-20-04)
- d.** Provide each participant with the opportunity for personal privacy and ensure privacy during provision of services; (3-20-04)
- e.** Ensure that participants are not compelled to perform services for the agency, its employees, ~~affiliated residential habilitation providers~~ or contractors and ensure that participants who do work for the agency, its employees, ~~affiliated residential habilitation providers~~ or contractors, are compensated for their efforts at prevailing wages and commensurate with their abilities; (~~3-20-04~~)(8-5-11)T
- f.** Ensure that participants have access to telephones, if living in a place other than their own home or the home of their family, with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their plans of service; and (3-20-04)
- g.** Ensure that participants have the opportunity to participate in social, religious, and community group activities. (3-20-04)

403. PARTICIPANT FINANCES.

When the residential habilitation agency or its employees, ~~affiliated residential habilitation providers~~ or contractors are designated as the payee on behalf of the participants, the agency must establish and maintain an accounting system that: (~~3-20-04~~)(8-5-11)T

01. Participant's Personal Finance Records. Assures a full and complete accounting of participants' personal funds entrusted to the agency, ~~or~~ its employees, ~~affiliated residential habilitation providers~~ or contractors on behalf of participants. Records of financial transactions must be sufficient to allow a thorough audit of the participant's funds. (~~3-20-04~~)(8-5-11)T

- 02. No Commingling of Funds.** Precludes any commingling of participant funds with agency funds. (3-20-04)
- 03. Availability of Funds.** Ensures that the participant's financial records must be available on request to the participant, participant's legal guardian or advocate. (3-20-04)
- 404. COMMUNICATION WITH PARTICIPANTS, PARENTS, LEGAL GUARDIANS, AND OTHERS.**
The residential habilitation agency must promote participation of participants, legal guardians, relatives and friends in the process of providing services to a participant unless their participation is unobtainable or inappropriate as prescribed by the plan of service; and (3-20-04)
- 01. Reciprocal Communication.** Answer communications from participant's families and friends promptly and appropriately; and (3-20-04)
- 02. Promotion of Visits and Activities.** Promote frequent and informal opportunities for visits, trips or vacations; and (7-1-95)
- 03. Notification of Guardian of Participant's Condition.** Notify *promptly* the participant's legal guardian within twenty-four (24) hours, if one exists, of any significant incidents, or changes in participant's condition including serious illness, accident, death, or abuse. ~~(3-20-04)~~(8-5-11)T
- 04. Notification to Department of a Participant's Condition.** Through a Department approved process, the agency must notify the Department within twenty-four (24) hours of any significant incidents affecting health and safety or changes in a participant's condition, including serious illness, accident, death, emergency medical care, hospitalization, adult protective services contact and investigation, or if the participant is arrested, contacted by, or under investigation by law enforcement, or involved in any legal proceedings. The events and the agency response to the events must be documented in the participant file. (8-5-11)T
- 405. TREATMENT OF PARTICIPANTS.**
The residential habilitation agency must develop and implement written policies and procedures including definitions that prohibit mistreatment, neglect or abuse of the participant to include at least the following: (3-20-04)
- 01. Interventions.** Positive behavior interventions must be used prior to and in conjunction with, the implementation of any restrictive intervention. (3-20-04)
- 02. No Abuse.** Employees, ~~affiliated residential habilitation providers~~ or contractors of the agency must not use physical, verbal, sexual, or psychological abuse or punishment. ~~(3-20-04)~~(8-5-11)T
- 03. No Punishment.** Employees, ~~affiliated residential habilitation providers~~ or contractors of the agency must not withhold food or hydration that contributes to a nutritionally adequate diet. ~~(3-20-04)~~(8-5-11)T
- 04. Reporting Violations.** Any agency employee, ~~affiliated residential habilitation provider~~ or contractor must report immediately report all allegations of mistreatment, abuse, neglect, injuries of unknown origin, or exploitation to the administrator and to adult protection workers and law enforcement officials, as required by law under Section 39-5202, Idaho Code, or to the Idaho Commission on Aging, IDAPA 15.01.03, "Rules Governing Ombudsman for the Elderly Program," or the designated state protection and advocacy system for persons with developmental disabilities when applicable. ~~(3-20-04)~~(8-5-11)T
- 05. Providing Evidence of Violation.** Agencies must provide evidence that all alleged violations are thoroughly investigated and must protect the participant from the possibility of abuse while the investigation is in progress. (3-20-04)
- 06. Reporting Results of Investigations.** Results of all investigations must be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action must be taken. (3-20-04)
- 07. Proper Treatment of Participants.** Participants must be treated with dignity and respect and their

personal choices and preferences are respected and honored whenever possible and consistent with their well being and their plan of service. (3-20-04)

08. Use of Restraint on Participants. No restraints, other than physical restraint in an emergency, must be used on participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on participants: (3-20-04)

a. Chemical restraint. Employees, ~~affiliated residential habilitation providers~~ or contractors of the agency must not use chemical restraint unless authorized by an attending physician. ~~(3-20-04)~~(8-5-11)T

b. Mechanical restraint. (7-1-95)

i. Mechanical restraint may be used for medical purposes when authorized by an attending physician. (7-1-95)

ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the participant, his service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)

c. Physical restraint. (7-1-95)

i. Physical restraint may be used in an isolated emergency to prevent injury to the participant or others and must be documented in the participant's record. (3-20-04)

ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the participant, his service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.0310, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)

d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the participant, his service coordinator his team, and a QMRP or a behavior consultant/crisis management consultant as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

501. ENFORCEMENT PROCESS.

The Department may impose a remedy or remedies when it determines a residential habilitation agency is not in compliance with these rules. (8-5-11)T

01. Determination of Remedy. In determining which remedy or remedies to impose, the Department will consider the residential habilitation agency's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, and the potential risk to participants. Subject to these considerations, the Department may impose any of the remedies in Subsection 501.02 of this rule, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. (8-5-11)T

02. Enforcement Remedies. If the Department determines that a residential habilitation agency is out of compliance with these rules, it may impose any of the following remedies according to Section 501.01 of this rule. (8-5-11)T

a. Require the residential habilitation agency to submit a plan of correction that must be approved in writing by the Department; (8-5-11)T

- b.** Issue a provisional certificate with a specific date for correcting deficient practices; (8-5-11)T
- c.** Ban enrollment of all participants with specified diagnoses; (8-5-11)T
- d.** Ban any new enrollment of participants; (8-5-11)T
- e.** Revoke the residential habilitation agency's certificate; or (8-5-11)T
- f.** Summarily suspend the certificate and transfer participants. (8-5-11)T

03. Immediate Jeopardy. If the Department finds a residential habilitation agency's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the residential habilitation agency's certificate. (8-5-11)T

04. No Immediate Jeopardy. If the Department finds that the residential habilitation agency's deficiency or deficiencies do not immediately jeopardize participant health or safety, the Department may impose one (1) or more of the remedies specified in Subsections 501.02.a. through 501.02.e. of this rule. (8-5-11)T

05. Repeat Deficiencies. If the Department finds a repeat deficiency in a residential habilitation agency, it may impose any of the remedies listed in Subsection 501.02 of this rule as warranted. The Department may monitor the residential habilitation agency on an "as needed" basis, until the agency has demonstrated to the Department's satisfaction that it is in compliance with requirements governing residential habilitation agencies and that it is likely to remain in compliance. (8-5-11)T

06. Failure to Comply. The Department may impose one (1) or more of the remedies specified in Subsection 501.02 of this rule if: (8-5-11)T

a. The residential habilitation agency has not complied with any requirement in these rules within three (3) months after the date it was notified of its failure to comply with such requirement; or (8-5-11)T

b. The residential habilitation agency has failed to correct the deficiencies stated in the agency's accepted plan of correction and as verified by the Department, via resurveys. (8-5-11)T

502. REVOCATION OF CERTIFICATE.

01. Revocation of the Residential Habilitation Agency's Certificate. The Department may revoke a residential habilitation agency's certificate when persuaded by the preponderance of the evidence that the agency is not in substantial compliance with the requirements in this chapter of rules. (8-5-11)T

02. Causes for Revocation of the Certificate. The Department may revoke any residential habilitation agency's certificate for any of the following causes: (8-5-11)T

a. The certificate holder has willfully misrepresented or omitted information on the application for certification or other documents pertinent to obtaining a certificate; (8-5-11)T

b. The agency is not in substantial compliance with these rules; (8-5-11)T

c. When persuaded by preponderance of the evidence that conditions exist in the agency that endanger the health or safety of any participant; (8-5-11)T

d. Any act adversely affecting the welfare of participants is being permitted, performed, or aided and abetted by the person or persons supervising the provision of services in the agency. Such acts include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; (8-5-11)T

e. The provider has demonstrated or exhibited a lack of sound judgment that jeopardizes the health, safety, or well-being of participants; (8-5-11)T

- f.** The agency has failed to comply with any of the conditions of a provisional certificate: (8-5-11)T
- g.** The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant: (8-5-11)T
- h.** An accumulation of minor deficiencies that, when considered as a whole, indicate the agency is not in substantial compliance with these rules: (8-5-11)T
- i.** Repeat deficiencies by the agency of any requirement of these rules or of the Idaho Code: (8-5-11)T
- j.** The agency lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of participants served at the agency: (8-5-11)T
- k.** The agency is not in substantial compliance with the provisions for services required in these rules or with the participants' rights under Section 402 of these rules: (8-5-11)T
- l.** The certificate holder refuses to allow the Department or protection and advocacy agencies full access to the agency environment, agency records, or the participants. (8-5-11)T

503. NOTICE OF ENFORCEMENT REMEDY.

The Department will notify the following of the imposition of any enforcement remedy on a residential habilitation agency: (8-5-11)T

01. Notice to the Residential Habilitation Agency. The Department will notify the residential habilitation agency in writing, transmitted in a manner that will reasonably ensure timely receipt. (8-5-11)T

02. Notice to Public. The Department will notify the public by sending the residential habilitation agency printed notices to post. The residential habilitation agency must post all the notices on their premises in plain sight in public areas where they will readily be seen by participants and their representatives, including exits and common areas. The notices must remain in place until all enforcement remedies have been officially removed by the Department. (8-5-11)T

03. Notice to the Professional Licensing Boards. The Department will notify professional licensing boards, as appropriate. (8-5-11)T

504. -- 509. (RESERVED)

510. EMERGENCY POWERS OF THE DIRECTOR.

In the event of an emergency endangering the life or safety of a participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director must provide an opportunity for a hearing. (8-5-11)T

511. INJUNCTION TO PREVENT OPERATION WITHOUT CERTIFICATE.

Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state 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 certificate required under this chapter. (8-5-11)T

5012. -- 999. (RESERVED)