# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

## DOCKET NO. 16-0309-1107

## NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), 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(b) and 56-255, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

| Thursday, October 13, 2011<br>6:00 p.m. (Local) | Monday, October 17, 2011<br>6:00 p.m. (Local) | Wednesday, October 19, 2011<br>6:00 p.m. (Local) |
|---|---|---|
| **Health & Welfare Region IV**<br>**1720 Westgate Drive**<br>**Suite A Rm. 131**<br>**Boise, ID** | **Health & Welfare Region I**<br>**1120 Ironwood Drive**<br>**Suite 102, Large Conf. Rm.**<br>**Coeur d'Alene, ID** | **Health & Welfare Region VII**<br>**150 Shoup Ave**<br>**2nd Floor Conf. Rm.**<br>**Idaho Falls, ID** |

The hearing sites 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:

Under Section 56-255(5)(a)(xi) and (xii), Idaho Code, the Department is directed to limit benefits to eligible participants of the medical assistance program for physical therapy, speech therapy, and occupational therapy services. These services are to be aligned to meet the annual Medicare caps for the same services. These proposed rule changes limiting therapy services will be implemented on January 1, 2012.

**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 anticipated fiscal impact will result in cost savings of $150,000 in state general funds for the SFY 2012, and $300,000 for each subsequent year.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is in response to 2011 legislation under HB 260.

**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 proposed rule, contact Jeanne Siroky (208) 364-1897.

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 October 26, 2011.

DATED this 8th day of September, 2011.

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1107**

**732. THERAPY SERVICES: COVERAGE AND LIMITATIONS.**
Therapy services are covered under these rules when provided by the following providers: outpatient hospitals, outpatient rehabilitation facilities, comprehensive outpatient rehabilitative facilities, nursing facilities, developmental disability agencies, school-based services, independent practitioners, and home health agencies. (4-2-08)

**01. Service Description**: **Occupational Therapy and Physical Therapy**. Modalities, therapeutic procedures, tests, and measurements as described in the Physical Medicine and Rehabilitation Subsection and the Neurology and Neuromuscular Procedures Subsection of the Physician's Current Procedural Terminology (CPT Manual) are covered with the following limitations: (4-2-08)

**a.** Any evaluation or re-evaluation may only be performed by the therapist. Any changes in the participant's condition not consistent with planned progress or treatment goals necessitate a documented re-evaluation by the therapist before further treatment is carried out. (4-2-08)

**b.** Any CPT procedure code that falls under the heading of either, "Active Wound Care Management," or "Tests and Measurements," requires the therapist to have direct, one-to-one, patient contact. (4-2-08)

**c.** The therapist may be reimbursed for the technical component of muscle testing, joint range of motion, electromyography, or nerve velocity determinations as described in the CPT Manual when ordered by a physician, nurse practitioner, or physician assistant. (4-2-08)

**d.** Any assessment provided under the heading "Orthotic Management and Prosthetic Management" must be completed by the therapist. (4-2-08)

**e.** Any modality that is defined as "unlisted" in the CPT Manual requires prior authorization by the Department. In this case, the therapist and the physician, nurse practitioner, or physician assistant must provide information in writing to the Department that documents the medical necessity of the modality requested. (4-2-08)

**f.** The services of therapy assistants used when providing covered therapy benefits are included as part of the covered service. These services are billed by the supervising therapist. Therapy assistants may not provide evaluation services, make clinical judgments or decisions, or take responsibility for the service. Therapy assistants act at the direction and under the supervision of the treating therapist and in accordance with state licensure rules. (4-2-08)

**02. Service Description: Speech-Language Pathology**. Speech-language pathology services must be provided as defined in Section 730 of these rules. Services provided by speech-language pathology assistants are considered unskilled services, and will be denied as not medically necessary if they are billed as speech-language pathology services. (4-2-08)

**03. Non-Covered Services: Occupational Therapy, Physical Therapy, and Speech-Language**

**Pathology**. (4-2-08)

**a.** Continuing services for participants who do not exhibit the capability to achieve measurable improvement. (4-2-08)

**b.** Services that address developmentally acceptable error patterns. (4-2-08)

**c.** Services that do not require the skills of a therapist or therapy assistant. (4-2-08)

**d.** Services provided by unlicensed aides or technicians, even if under the supervision of a therapist, except as provided under Section 854 of these rules. (4-2-08)

**e.** Massage, work hardening, and conditioning. (4-2-08)

**f.** Services that are not medically necessary, as defined in Section 011 of these rules. (4-2-08)

**g.** Maintenance programs, as defined under Section 730 of these rules. (4-2-08)

**h.** Duplicate services, as defined under Section 730 of these rules. (4-2-08)

**i.** Group therapy in settings other than school-based services and developmental disability agencies. (4-2-08)

**04. Service Limitations**. (4-2-08)

**a.** Physical therapy (PT) and ~~*Occupational Therapy. Each participant is limited to twenty-five (25) outpatient physical therapy visits and twenty-five (25) outpatient occupational therapy visits during any calendar year*~~ speech-language pathology (SLP) services are limited to a combined annual dollar amount for all PT and SLP services. The Department will set the total amount based on the annual Medicare caps. The Department may ~~*prior*~~ authorize additional ~~*visits if additional physical*~~ therapy ~~*or occupational therapy*~~ services, ~~*or both,*~~ when the services are determined to be medically necessary and supporting documentation is provided to the Department. ~~*(4-2-08)*~~( )

**b.** ~~*Speech-Language Pathology Services. Each participant is limited to forty (40) outpatient speech-language pathology visits during any calendar year.*~~ Occupational therapy services are limited to an annual dollar amount set by the Department based on the annual Medicare caps. The Department may ~~*prior*~~ authorize additional ~~*visits if additional speech-language pathology*~~ therapy services, when the services are determined to be medically necessary and supporting documentation is provided to the Department. ~~*(4-2-08)*~~( )

**c.** Exceptions to ~~*visit*~~ service limitations. ~~*(4-2-08)*~~( )

i. Therapy provided by home health agencies is subject to the limitations on home health ~~*visits*~~ services contained in Section 722 of these rules. ~~*(4-2-08)*~~( )

ii. Therapy provided through school-based services is not included in the ~~*visit*~~ service limitations under Subsection 732.04 of this rule. ~~*(4-2-08)*~~( )

iii. Therapy provided to EPSDT participants under the age of twenty-one (21) in accordance with the EPSDT requirements contained in Sections 881 through 883 of these rules, and in Section 1905(r) of the Social Security Act, will be authorized by the Department when additional therapy services are medically necessary. ( )