

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND AND DISABLED (AABD)

DOCKET NO. 16-0305-1201

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 56-202 and 56-203, Idaho Code.

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

Friday - October 12, 2012 - 10:00 a.m. MDT

**DHW Region IV Office
1720 N. Westgate Drive
Suite A, Room 131
Boise, ID 83704**

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:

In response to a petition for rulemaking from the Trust and Estate Professionals of Idaho (TEPI), the Department is amending these rules to align the asset transfer penalties for Medicaid applicants under the home and community based services (HCBS) with those applicants who reside in a nursing facility. By allowing HCBS applicants to have an asset transfer penalty period implemented, will remove the disparity between the Nursing Home and Home Community Based Services (HCBS) participants.

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 Department considers this rule change to be cost neutral. The intent of this change is for eligible participants to receive the most cost-effective level of service and to be able to stay in the community rather than be forced into a nursing facility.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 7, 2012, Idaho Administrative Bulletin, [Vol. 12-3, page 29](#).

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 Shannon Epperley at (208) 334-5969.

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 24, 2012.

DATED this 29th day of August, 2012.

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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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0305-1201

835. APPLYING THE PENALTY PERIOD OF RESTRICTED COVERAGE.

Restricted coverage continues until the participant or spouse recovers all the assets, receives fair market value at the time of the transfer for all of the assets, or the period of restricted coverage ends. The penalty continues whether or not the participant is in long-term care. The penalty period for asset transfers is applied as follows: (3-30-07)

01. Penalty Period for Transfer Prior to February 8, 2006. For assets transferred prior to February 8, 2006, there is no penalty if the amount transferred is less than the cost of one (1) month's care. The penalty period begins running the month the transfer took place. The month the transfer took place is counted as one (1) of the penalty months. A penalty period is computed for each transfer. A penalty period must expire before the next begins. Each partial month before the end of consecutive penalty periods is a penalty month. A partial month at the end of consecutive penalty periods is dropped. (3-30-07)

02. Penalty Period for Transfers On or After February 8, 2006. For assets transferred on or after February 8, 2006, the penalty period begins running the first day of the month after the month the transfer took place or was discovered to have taken place, or the date the individual would have been eligible for long-term care services or HCBS, if not for the transfer, whichever date is later in time. The value of all asset transfers made during the look-back period is accumulated for the purpose of calculating the penalty. If an additional transfer is discovered after the penalty has been served, a new penalty period begins the month following timely notice of closure of benefits. When a penalty period ends after the first day of the month, eligibility for long-term care services begins the day after the penalty period ends. (~~3-30-07~~)()