

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.30 - BEHAVIORAL HEALTH COMMUNITY CRISIS CENTERS

DOCKET NO. 16-0730-1301 (NEW CHAPTER)

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 the Regional Mental Health Services Act, Title 39, Chapter 31, Idaho Code; also Sections 56-1003, 56-1004, 56-1004A, 56-1007 and 56-1009, Idaho Code.

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

ORIGINATING LOCATION -- LIVE MEETING

Friday, October 18, 2013

12:30 - 2:30 pm (PDT) -- 1:30 - 3:30 pm (MDT)

**Idaho Department of Health and Welfare, Central Office
Conference Room 3A (3rd floor)
450 West State Street
Boise, ID 83702**

VIDEOCONFERENCE LOCATIONS

Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814	Region II Office – Lewiston 1st Floor Conference Rm. 1118 “F” Street Lewiston, ID 83501
Region III Office – Caldwell Owyhee Conference Room (Rm. 226) 3402 Franklin Road Caldwell, ID 83605	Region IV Office – Boise Room 137 1720 Westgate Drive, Suite A Boise, ID 83704
Region V Office – Twin Falls Room 116 823 Harrison Twin Falls, ID 83301	Region VI Office – Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201
Region VII Office – Idaho Falls Conference Room 240 150 Shoup Ave. Idaho Falls, ID 83402	

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:

The proposed chapter establishes the benefit and eligibility process for behavioral health community crisis centers in the state of Idaho. These programs will provide behavioral health crisis services to persons residing in Idaho.

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:

These rules will provide an opportunity for the development of behavioral health community crisis centers. The Department of Health and Welfare may be making a budget request separate from these rules. However, there is no anticipated fiscal impact to the state general fund or any other funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible due to the fact that there is currently a lack of identifiable representatives of affected interests. Behavioral health community crisis centers are a component of the Idaho Behavioral Health system of care transformation. In the transformed structure, the Department of Health and Welfare retains its role as the state mental health authority and has responsibility for oversight of the behavioral health system of care. The proposed chapter establishes behavioral health community crisis centers and does not impact existing processes for private providers. There are no stakeholders outside of the Department at this time.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following two items are being incorporated by reference into these rules to give them the force and effect of law. These documents are not being reprinted in this chapter of rules due to their length and format and because of the cost for republication.

1. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-V), 2013.
2. *Idaho Behavioral Health Standards*, Idaho Department of Health and Welfare, 2013.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Casey Moyer at (208) 334-4916.

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 October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock
DHW - Administrative Rules Unit
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 DOCKET NO. 16-0730-1301

IDAPA 16
TITLE 07
CHAPTER 30

16.07.30 - BEHAVIORAL HEALTH COMMUNITY CRISIS CENTERS

000. LEGAL AUTHORITY.

The Idaho Legislature has delegated to the Department of Health and Welfare, as the state mental health authority, the responsibility to ensure that mental health services are available throughout the state of Idaho to individuals who need such care and who meet certain eligibility requirements under the Regional Mental Health Services Act. This chapter is authorized under the Regional Mental Health Services Act, Title 39, Chapter 31, Idaho Code, as well as Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.07.30, "Behavioral Health Community Crisis Centers." ()

02. Scope. These rules establish the benefit and eligibility process for behavioral health community crisis centers in the state of Idaho. These programs provide behavioral health crisis services to persons residing in Idaho. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These materials are available for public inspection and copying at cost in the main office of the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. ()

003. ADMINISTRATIVE APPEALS.

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

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference in this chapter of rules. ()

01. DSM-V. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V), Arlington, VA, American Psychiatric Association, 2013, copies of the manual are available from the American Psychiatric Association, 1000 Wilson Blvd., Arlington VA 22209-3901. A copy of the manual is also available for public review at the Department of Health And Welfare, 450 West State Street, Boise, Idaho, 83702. ()

02. Idaho Behavioral Health Standards. Idaho Behavioral Health Standards, Boise, Idaho, Idaho Department of Health and Welfare, 2013. A copy of the manual is available for public review at the Department of Health And Welfare, 450 West State Street, Boise, Idaho, 83702. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. 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. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

05. Internet Websites. The Department internet website is found at <http://www.healthandwelfare.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.

01. Confidentiality of Records. Any disclosure of confidential information used or disclosed in the course of the Departments business is subject to the restrictions in state or federal law, federal regulation, and IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

02. Public Records Act. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when request for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

007. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance With Department Criminal History and Background Check. All owners, operators, employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide direct care or services, or whose position requires regular contact with clients, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." ()

02. Availability to Work or Provide Service. An individual listed in Subsection 009.01 of these rules is available to work on a provisional basis at the discretion of the employer or agency once the individual has submitted his criminal history and background check application, it has been signed and notarized, reviewed by the employer or agency, and no disqualifying crimes or relevant records are disclosed on the application. An individual must be fingerprinted within twenty-one (21) days of submitting his criminal history and background check application. ()

a. An individual is allowed to work or have access to clients only under supervision until the criminal history and background check is completed. ()

b. An individual, who does not receive a criminal history and background check clearance, or a waiver granted under the provisions in this chapter, may not provide direct care or services, or serve in a position that requires regular contact with clients in a behavioral health community crisis center. ()

03. Waiver of Criminal History and Background Check Denial. An individual, who receives a conditional or unconditional denial for a criminal history and background check, may apply for a waiver to provide direct care or services, or serve in a position that requires regular contact with clients in a behavioral health community crisis center. A waiver may be granted on a case-by-case basis upon administrative review by the Department of any underlying facts and circumstances in each individual case. A waiver will not be granted for crimes listed in Subsection 009.04 of this rule. ()

04. No Waiver for Certain Designated Crimes. No waiver will be granted by the Department for any of the following designated crimes or substantially conforming foreign criminal violations: ()

- a. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; ()
- b. Incest, as defined in Section 18-6602, Idaho Code; ()
- c. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ()
- d. Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ()
- e. Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; ()
- f. Rape, as defined in Section 18-6101, Idaho Code; ()
- g. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ()
- h. Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; ()
- i. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ()
- j. Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; ()
- k. Any felony punishable by death or life imprisonment; or ()
- l. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ()

05. Administrative Review. An administrative review for a waiver may consist of a review of documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review deemed necessary by the Department. The Department may appoint a subcommittee to conduct administrative reviews provided for under Subsections 009.03 through 009.12 of this rule. ()

06. Written Request for Administrative Review and Waiver. A written request for a waiver must be sent to the Administrative Procedures Section, 450 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0026 within fourteen (14) calendar days from the date of the issuance of a denial from the Department's Criminal History Unit. The fourteen (14) day period for submitting a request for a waiver may be extended by the Department for good cause. ()

07. Scheduling of Administrative Review. Upon receipt of a written request for a waiver, the Department will determine the type of administrative review to be held, and conduct the review within thirty (30) business days from the date of receipt. When an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date. ()

08. Factors Considered During Administrative Review. During the administrative review, the following factors may be considered: ()

- a. The severity or nature of the crimes, or other findings; ()
- b. The period of time since the incidents occurred; ()
- c. The number and pattern of incidents being reviewed; ()
- d. Circumstances surrounding the incidents that would help determine the risk of repetition; ()

- e. The relationship between the incidents and the position sought; ()
- f. Activities since the incidents, such as continuous employment, education, participation in treatment, completion of a problem-solving court or other formal offender rehabilitation, payment of restitution, or any other factors that may be evidence of rehabilitation. ()
- g. A pardon that was granted by the Governor or the President; ()
- h. The falsification or omission of information on the self-declaration form and other supplemental forms submitted; and ()
- i. Any other factor deemed relevant to the review. ()
- 09. Administrative Review Decision.** A notice of decision will be issued by the Department within fifteen (15) business days of completion of the administrative review. ()
- 10. Decision to Grant Waiver.** The Department’s decision to grant a waiver does not set a precedent for subsequent requests by an individual for a waiver. A waiver granted under this chapter is not a criminal history and background check clearance, and is only applicable to services and programs governed under this chapter. It does not apply to other Department programs requiring clearance of a criminal history and background check. ()
- 11. Revocation of Waiver.** The Department may choose to revoke a waiver at its discretion for circumstances that it identifies as a risk to client health and safety, at any time. ()
- 12. Waiver Decisions are not Subject to Review or Appeal.** The decision or actions of the Department concerning a waiver are not subject to review or appeal, administratively or otherwise. ()
- 13. Employer Responsibilities.** A waiver granted by the Department is not a determination of suitability for employment. The employer is responsible for reviewing the results of a criminal history and background check even when a clearance is issued or a waiver is granted. Making a determination as to the ability or risk of the individual to provide direct care services or to serve in a position that requires regular contact with children and vulnerable adults is the responsibility of the employer. ()
- 010. DEFINITIONS AND ABBREVIATIONS.**
For the purposes of these rules, the following terms are used as defined below: ()
- 01. Adolescent.** An individual between the ages of fourteen (14) and eighteen (18). ()
- 02. Adult.** An individual eighteen (18) years of age or older. ()
- 03. Applicant.** An adult individual who is seeking crisis services through a behavioral health community crisis center who has completed, or has had completed on his behalf, an application for services. ()
- 04. Behavioral Health Community Crisis Center.** An outpatient facility operated by a hospital or mental health center that provides evaluation, intervention, and referral for individuals experiencing a crisis due to serious mental illness or a serious mental illness with co-occurring substance use disorder. The facility may not provide services to a client for more than twenty-three (23) hours and fifty-nine (59) minutes from the time the client arrives at the facility. The facility must discharge or transfer the client to the appropriate level of care. ()
- 05. Child.** An individual under the age of fourteen (14) years. ()
- 06. Client.** A person receiving services through a behavioral health community crisis center. The term “client” is synonymous with the following terms: patient, participant, resident, consumer, or recipient of treatment or services. ()
- 07. Department.** The Idaho Department of Health and Welfare or its designee. The Department is designated as the state mental health authority under Section 39-3124, Idaho Code. ()

- 08. Facility.** A behavioral health community crisis center, or a person authorized to act on its behalf. ()
- 09. Good Cause.** A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not pass a criminal history and background check. ()
- 10. Individualized Service Plan.** A written action plan based on an intake assessment that identifies the applicant's needs, strategies for services to meet those needs, treatment goals, and objectives. ()
- 11. Intake Assessment.** The collection of data, analysis, and review used to screen and determine whether an applicant is eligible for behavioral health community crisis services. ()
- 12. Outpatient Crisis Services.** An organized non-residential service, delivered in a variety of settings, in which behavioral health treatment personnel provide professionally directed evaluation and treatment for individuals experiencing crisis situations. ()
- 011. -- 099. (RESERVED)**

**GENERAL PROVISIONS OF BEHAVIORAL HEALTH COMMUNITY CRISIS CENTERS
(Sections 100 through 250)**

- 100. ACCESSING BEHAVIORAL HEALTH COMMUNITY CRISIS CENTER SERVICES.**
Services may be accessed by eligible applicants through an application and request for an initial intake eligibility assessment. ()
- 01. Application for Services.** An application for services is completed by the applicant upon entry into the facility. The voluntarily completed application serves as consent for further assessment of the applicant. ()
- 02. Intake Assessment.** The facility will conduct a mental health screening using a Department approved instrument. The facility staff will gather information as needed, in order to complete the screening and intake process. ()
- 101. INTAKE ASSESSMENT.**
The facility must establish admission criteria that assess the individual client's needs and the appropriateness of the services to meet those needs. ()
- 01. Eligibility.** At a minimum, admission criteria must require that the client: ()
- a.** Be at least eighteen (18) years of age; ()
 - b.** Be medically stable, with the exception of the person's mental illness or serious mental illness with a co-occurring substance use disorder; ()
 - c.** Have a DSM-V mental health diagnosable condition; and ()
 - d.** Be in need of frequent observation on an ongoing basis. ()
- 02. The Facility Determines Eligibility and Capacity for Community Crisis Services.** The total number of adults who are eligible for behavioral health community crisis services through the facility will be established by the facility. The facility may, in its sole discretion, limit or prioritize behavioral health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as availability of funding, the degree of financial need, the degree of clinical need, or other factors. ()
- 03. Ineligibility Conditions.** An adult who does not meet the requirements under Subsection 101.01 of

this rule is not eligible for behavioral health community crisis services. An adult with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorder Services," or IDAPA 16.04.11, "Developmental Disability Agencies," for substance use or developmental disability services. ()

102. ELIGIBILITY DETERMINATION.

01. Notification of Eligibility Determination. The facility will determine the adult's eligibility for behavioral health community crisis services in accordance with Section 101 of these rules within one (1) hour of completing an intake assessment. The written notice will include: ()

- a. Client name and identifying information; ()
- b. A statement of the decision; ()
- c. A concise statement of the reasons for the decision; and ()
- d. Referral to other appropriate community resources, when applicable. ()

02. Right to Accept or Reject Services. If the facility determines that an applicant is eligible for services through the facility, an individual has the right to accept or reject services offered by the facility. ()

03. Reapplication for Community Crisis Services. If the facility determines that an applicant is not eligible for services through the facility, the applicant may reapply after twenty-four (24) hours, or at any time upon a showing of a substantial, material change in circumstances. ()

04. Information that Must be Provided to the Participant. Upon admission, or as soon as possible if not clinically appropriate upon admission, the facility must provide each client with the following: ()

- a. A written statement of client rights which, at a minimum, includes the applicable patient rights; ()
- b. A copy of the crisis response facility grievance procedure; and ()
- c. The written rules of conduct, including the consequences for violating the rules. ()

103. EMERGENCY SERVICES.

01. Identification of Emergency Services Needed. If emergency services are clinically necessary, as determined by facility staff, the facility will identify the emergency services that are consistent with the applicant's level of need and a preliminary finding from the intake assessment. ()

02. Immediate Intervention. The facility must ensure inpatient care is available through a transfer agreement for clients in need of a higher level of care. ()

03. Client Management. Use of de-escalation techniques including physical and nonphysical methods, by trained staff is permissible. ()

104. -- 199. (RESERVED)

200. INDIVIDUALIZED SERVICE PLAN.

01. Individualized Service Plan. A service plan will be developed by the facility in collaboration with the client, and may include service providers. This plan will be specific, measurable, and realistic in identification of the goal(s) for crisis stabilization, relevant areas of concern, and desired results as outlined in the Idaho Behavioral Health Standards. ()

02. Referrals. The facility must make referrals for services that would help prevent or diminish future crises at the time of the client's discharge. Referrals may include additional treatment, training, or community-based services, such as assistance securing housing. ()

201. -- 205. (RESERVED)

206. OUTCOMES FOR COMMUNITY CRISIS CENTERS.

Outcomes for behavioral health community crisis centers are measured through the administration of a satisfaction survey and a standardized assessment tool. ()

207. USE OF PUBLIC FUNDS AND BENEFITS.

Public funds and benefits will be used to provide services for eligible adults under Section 102 of these rules. Services are planned and implemented to maximize community integration and the individual's ability to provide adequate safety and well-being in his community. Services are individually planned to meet the unique needs of each participant. ()

208. -- 210. (RESERVED)

211. CLINICAL RECORDS.

Every behavioral health community crisis center must maintain, control, and supervise client records and is responsible for maintaining their quality in accordance with the requirements set forth in these rules. ()

01. Active Client Records Kept at the Facility Site. The active client's records must be kept at the facility site where the client is being treated. ()

02. Compilation, Storage, Dissemination, and Accessibility of Client Records. The facility must have written policies and procedures governing the compilation, storage, dissemination, and accessibility of client records. ()

03. Electronic Storage of Client Data. When a facility stores client data in electronic or other types of automated information systems, they must have security measures to prevent inadvertent or unauthorized access to such data. ()

04. Length of Maintenance of Client Records. Client records must be maintained for a minimum of five (5) years from the date they are officially closed. ()

212. CONTENTS OF CLIENT RECORDS.

01. Intake Assessment. As defined in Section 101 of these rules. ()

02. Eligibility Determination. As defined in Section 102 of these rules. ()

03. Service Plan. As defined in Section 200 of these rules. ()

04. Progress Notes. ()

a. The facility must maintain progress notes for each client. ()

b. The progress notes must be completed following the intake assessment and eligibility determination and updated by the end of each shift into the client's clinical record. ()

c. The progress notes must describe at minimum the following: ()

i. Client's physical condition; ()

ii. Mental status; ()

- iii. Involvement in treatment services; and ()
- iv. Contain a signature and date of staff member completing the note. ()
- 05. Discharge Summary.** A discharge summary must be entered into the client record and will contain at minimum: ()
 - a. Client status at discharge; ()
 - b. Treatment progress; ()
 - c. Summary of services provided; and ()
 - d. Referral for further treatment. ()

213. -- 249. (RESERVED)

250. FINANCIAL RESPONSIBILITY FOR COMMUNITY CRISIS CENTER SERVICES.

Individuals receiving behavioral health community crisis services through the Department are responsible for paying for the services provided. Individuals must complete a "Fee Determination Form" prior to the delivery of behavioral health community crisis services. The financial responsibility for each service will be in accordance with the individual's ability to pay as determined under Sections 300 and 400 of IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." ()

251. -- 999. (RESERVED)