

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
16.07.17 - ALCOHOL AND SUBSTANCE USE DISORDERS SERVICES**

**DOCKET NO. 16-0717-1301**

**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 39-4605, Idaho Code.

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

**\*ORIGINATING LOCATION -- LIVE MEETING\***

**Tuesday, September 10, 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\***

<b>Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814</b>	<b>Region II Office – Lewiston 1st Floor Conference Rm. 1118 “F” Street Lewiston, ID 83501</b>
<b>Region III Office – Caldwell Owyhee Conference Room (Rm. 226) 3402 Franklin Road Caldwell, ID 83605</b>	<b>Region IV Office – Boise Room 142 1720 Westgate Drive, Suite A Boise, ID 83704</b>
<b>Region V Office – Twin Falls Room 116 823 Harrison Twin Falls, ID 83301</b>	<b>Region VI Office – Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201</b>
<b>Region VII Office – Idaho Falls Conference Room 240 150 Shoup Ave. Idaho Falls, ID 83402</b>	

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Division of Behavioral Health (DBH) is currently working on building a peer recovery system and one issue that has come up as a barrier in Idaho is the requirement around criminal history and background checks. The current requirement does not work for the services that are being provided nor does it fit the model of recovery services that is being promoted. DBH has received complaints from SUD service providers regarding the current rule as it negatively impacts their workforce and ability to provide treatment services.

DBH has negotiated with providers and other interested parties to develop a criminal history and background check rule that both protects the client and acknowledges those who have been successful in their recovery by allowing them to work in the treatment field. The text of these proposed rule changes provides an administrative review on a case-by-case basis for individuals who do not receive a criminal history clearance to request a waiver. These rules provide for this waiver to help establish a peer recovery system for providers of alcohol and substance use disorders services.

**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:

There is no anticipated fiscal impact to the state general fund due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 3, 2013, Idaho Administrative Bulletin, Vol. 13-4, pages 15 and 16, under Docket No. 16-0720-1301.

**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 Treena Clark at (208) 364-6611.

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 September 25, 2013.

DATED this 1st day of August, 2013.

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  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

---

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0717-1301**

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

**01. Compliance With Department Criminal History and Background Check.** All *current Department owners, operators, employees, applicants, transfers, reinstated former employees, student interns, contractors, and employees, volunteers, and others assigned to programs that involve* who provide direct *contact with children or vulnerable adults as described in Section 39-5302, Idaho Code, 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." (5-8-09)( )

**02. Availability to Work or Provide Service.** *Certain individuals are allowed to provide services after the self-declaration is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." The criminal history check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers.* 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. (5-8-09)( )

**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 an alcohol and substance use disorders treatment and recovery support services program. ( )

**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 an alcohol and substance use disorders treatment and recovery support services program. 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 chose 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 is 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 - A THROUGH F.**

For the purposes of these rules, the following terms are used as defined below: (5-8-09)

**01. Adolescent.** An individual between the ages of fourteen (14) and eighteen (18). (5-8-09)

**02. Adult.** An individual eighteen (18) years or older. (5-8-09)

**03. Applicant.** An adult or adolescent individual who is seeking alcohol or substance use disorders services through the Department who has completed or had completed on his behalf an application for alcohol or substance use disorder services. (5-8-09)

**04. ASAM PPC-2R.** Refers to the second edition, revised, manual of the patient placement criteria for the treatment of substance-related disorders, published by the American Society of Addiction Medicine. (5-8-09)

**05. Assessment and Referral Services.** A substance use disorders program provides these services in order to treat, provide services, or refer individuals. An assessment is designed to gather and analyze information regarding a client's current substance use disorder behavioral, social, medical, and treatment history. The purpose of the assessment is to provide sufficient information for problem identification and, if appropriate, substance use disorder related treatment or referral. (7-1-13)

**06. Child.** An individual under the age of fourteen (14) years. (7-1-13)

**07. Client.** A person receiving treatment for an alcohol or substance use disorder. The term "client" is synonymous with the terms: patient, resident, consumer, or recipient of treatment. (5-8-09)

**08. Clinical Judgment.** Refers to observations and perceptions based upon education, experience, and clinical assessment. This may include psychometric, behavioral, and clinical interview assessments that are structured, integrated, and then used to reach decisions, individually or collectively, about an individual's functional, mental, and behavioral attributes and alcohol and substance use disorders service needs. (5-8-09)

**09. Clinical Necessity.** Alcohol or substance use disorder services are deemed clinically necessary when the Department, in the exercise of clinical judgment, would recommend services to an applicant for the purpose of evaluating, diagnosing, or treating alcohol or substance use disorders that are: (5-8-09)

**a.** Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for treating the applicant's alcohol or substance use disorder; and (5-8-09)

**b.** Not primarily for the convenience of the applicant or service provider and not more costly than an alternative service or sequence of services and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the applicant's alcohol or substance use disorder. (5-8-09)

**10. Clinical Team.** A proposed client's clinical team may include: qualified clinicians, behavioral health professionals, professionals other than behavioral health professionals, behavioral health technicians and any other individual deemed appropriate and necessary to ensure that the assessment and subsequent treatment is

comprehensive and meets the needs of the proposed client. (5-8-09)

**11. Clinically Managed Low-Intensity Residential Treatment.** Is a program that offers at least five (5) hours per week of outpatient or intensive outpatient treatment services along with a structured recovery environment, staffed twenty-four (24) hours per day, which provides sufficient stability to prevent or minimize relapse or continued use. This level of care is also known as a Halfway House. (5-8-09)

**12. Clinically Managed Medium-Intensity Residential Treatment.** Frequently referred to as residential care, programs provide a structured, twenty-four (24) hour intensive residential program for clients who require treatment services in a highly structured setting. This type of program is appropriate for clients who need concentrated, therapeutic services prior to community residence. Community reintegration of residents in this level of care requires case management activities directed toward networking clients into community-based recovery support services such as housing, vocational services or transportation assistance so that the client is able to attend mutual/self-help meetings or vocational activities after discharge. (5-8-09)

**13. Comprehensive Assessment.** Those procedures by which a substance use disorder clinician evaluates an individual's strengths, weaknesses, problems, needs, and determines priorities so that a service plan can be developed. (7-1-13)

**14. Contracted Intermediary.** A third party contractor of the Department who handles direct contracting with network providers for treatment services to include network management, claims payment, data gathering per Federal and State requirements and census management. (5-8-09)

**15. Department.** The Department of Health and Welfare or a person authorized to act on behalf of the Department. (5-8-09)

**16. Early Intervention Services.** Services that are designed to explore and address problems or risk factors that appear to be related to substance use. (7-1-13)

**17. Emergency.** An emergency exists if an adult or adolescent individual is gravely disabled due to mental illness or substance abuse or dependence or there is a substantial risk that physical harm will be inflicted by the proposed client: (5-8-09)

**a.** Upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or (5-8-09)

**b.** Upon another person as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm. (5-8-09)

**18. Federal Poverty Guidelines.** Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found at: <http://aspe.hhs.gov/poverty/>. (5-8-09)

**011. DEFINITIONS - G THROUGH Z.**

For the purposes of these rules, the following terms are used as defined below: ( )

**01. 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 receive a criminal history and background check clearance. ( )

**~~02.~~ Gravely Disabled.** An adult or adolescent who, as a result of mental illness or substance abuse or dependence, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, or essential medical care, or shelter or safety. (5-8-09)

**~~03.~~ Individualized Service Plan.** A written action plan based on an intake eligibility screening and full clinical assessment, that identifies the applicant's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives and the criteria for terminating the specified interventions. (7-1-13)

**2404. Intake Eligibility Screening.** The collection of data, analysis, and review, which the Department, or its designee, uses to screen and determine whether an applicant is eligible for adult or adolescent alcohol or substance use disorder services available through the Department. (5-8-09)

**2405. Intensive Outpatient Services.** An organized service delivered by addiction professionals or addiction-credentialed clinicians, which provides a planned regimen of treatment consisting of regularly scheduled sessions within a structured program, for a minimum of nine (9) hours of treatment per week for adults and six (6) hours of treatment per week for adolescents. (5-8-09)

**2406. Medically Monitored Detoxification.** Means medically supervised twenty-four (24) hour care for patients who require hospitalization for treatment of acute alcohol intoxication or withdrawal, from one (1) or more other substances of abuse, and other medical conditions which together warrant treatment in this type of setting. Length of stay varies depending on the severity of the disease and withdrawal symptoms. (7-1-13)

**2407. Medically Monitored Inpatient Treatment.** Medically supervised twenty-four (24) hour care for patients requiring hospitalization and treatment services. Medically monitored inpatient treatment provides treatment services and access to full range of services offered by the hospital. (7-1-13)

**2508. Network Treatment Provider.** A treatment provider who has facility approval through the Department and is contracted with the Department's Management Service Contractor. A list of network providers can be found at the Department's website given in Section 005 of these rules. The list is also available by calling these telephone numbers: 1 (800) 922-3406; or dialing 211. (5-8-09)

**2609. Opioid Replacement Outpatient Services.** This service is specifically offered to a client who has opioids as his substance use disorder. Services are offered under the guidelines of a federally accredited program. (7-1-13)

**2710. Outpatient Services.** An organized non-residential service, delivered in a variety of settings, in which addiction treatment personnel provide professionally directed evaluation and treatment for alcohol and substance use disorders. (5-8-09)

**2811. Priority Population.** Priority populations are populations who receive services ahead of other persons and are determined yearly by the Department based on federal regulations. A current list of the priority population is available from the Department. (7-1-13)

**2912. Recovery Support Services.** These services include: safe and sober housing that is staffed; transportation; child care; family education; life skills education; marriage education; drug testing; peer to peer mentoring; and case management. (5-8-09)

**3013. Residential Social Detoxification.** Means a medically supported twenty-four (24) hour, social rehabilitation residential program which provides physical care, education, and counseling as appropriate for the client's health and safety during his process of physical withdrawal from acute alcohol intoxication or withdrawal, or from one or more other substances of abuse. Social detoxification provides access into care and treatment of alcohol or substance use disorders through monitored withdrawal, evaluation of present or potential alcohol or substance dependency and other physical ailments, and intervention into the progression of the disease through timely utilization of resources. Length of stay in a social detoxification program varies from three (3) to seven (7) days depending on the severity of the disease and withdrawal symptoms. (5-8-09)

**314. Sliding Fee Scale.** A scale used to determine an individual's cost for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." (5-8-09)

**3215. Substance Dependence.** Substance dependence is marked by a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues to use alcohol or other drugs despite significant related problems. The cluster of symptoms can include: tolerance; withdrawal or use of a substance in larger amounts or over a longer period of time than intended; persistent desire or unsuccessful efforts to cut down or control substance use; a great deal of time spent in activities related to obtaining or using substances or to recover from their

effects; relinquishing important social, occupational or recreational activities because of substance use; and continuing alcohol or drug use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been cause or exacerbated by such use as defined in the DSM-IV-TR. (5-8-09)

**3316. Substance-Related Disorders.** Substance-related disorders include disorders related to the taking of alcohol or another drug of abuse, to the side effects of a medication and to toxin exposures. They are divided into two (2) groups: the Substance Use Disorders and the Substance-Induced Disorders as defined in the DSM-IV-TR. (5-8-09)

**3417. Substance Use Disorder.** Includes Substance Dependence and Substance Abuse, according to the DSM-IV-TR. Substance Use Disorders are one (1) of two (2) subgroups of the broader diagnostic category of Substance-Related Disorders. (5-8-09)

**3518. Substantial Material Change in Circumstances.** A substantial and material change in circumstances which renders the Department's decision denying alcohol and substance use disorders services arbitrary and capricious. (5-8-09)

**0142. -- 099. (RESERVED)**