

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.07.20 - ALCOHOL AND SUBSTANCE USE DISORDERS TREATMENT AND RECOVERY
SUPPORT SERVICES FACILITIES AND PROGRAMS**

DOCKET NO. 16-0720-1301

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

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 142 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 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 treatment 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 treatment and recovery programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: 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:

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.

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
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e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0720-1301

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. All owners, operators, employees, transfers, reinstated former employees, student interns, contractors and volunteers hired or contracted with after May 1, 2010, who provide direct care or services, or ~~have direct~~ whose position requires regular contact with clients ~~access~~, must comply with the provisions of IDAPA 16.05.06, “Criminal History and Background Checks.” ~~(5-1-10)~~()

02. Availability to Work. 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. ~~(5-1-10)~~()

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. ()

(BREAK IN CONTINUITY OF SECTIONS)

011. DEFINITIONS - D THROUGH H.

For the purposes of these rules, the following terms are used. (5-1-10)

01. Department. The Idaho Department of Health and Welfare. (5-1-10)

02. Detoxification Services. Services necessary to monitor individuals who are undergoing the systematic reduction of a toxic agent from the body during withdrawal. (5-1-10)

~~03. Direct Client Access.~~ *Direct client access means an employee, contractor, or volunteer who has accessibility to a client.* (5-1-10)

043. Director. The Director of the Department of Health and Welfare or his designee. (5-1-10)

054. Discharge. The point at which the client's active involvement in treatment or recovery support services is terminated and the program no longer maintains active responsibility for the care of the client. (5-1-10)

065. Discharge Summary. A document written by the client's provider upon discharge from treatment and contains a summary of the following: (5-1-10)

a. Client status at discharge; (5-1-10)

b. Treatment progress; (5-1-10)

c. Summaries of services to be provided after discharge; and (7-1-13)

d. Referrals for further treatment. (5-1-10)

~~076. 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)

~~087. Education.~~ Strategies that teach people critical information about alcohol and other drugs and the physical, emotional, and social consequences of their use. (5-1-10)

~~098. Executive Director.~~ The individual who is responsible for the overall management of the program or facility. The executive director is appointed by the governing body to act on its behalf. The term "executive director" is synonymous with the terms "administrator," "director," "superintendent," "president," "vice-president," and "executive vice-president." (5-1-10)

~~109. Facility/location.~~ The individual building or buildings, including furnishings and fixtures, or locations where persons with alcohol or substance use disorders receive services. The term "facility" is synonymous with office, clinic, or physical plant. (5-1-10)

10. 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. ()

11. Governing Body. The individual or individuals, board of directors, group, or agency that has ultimate authority and responsibility for the overall operation of an alcohol and substance use disorders treatment or recovery support services facility or program and for full compliance with these rules and minimum standards. (5-1-10)

12. Group Counseling. The application of formal counseling techniques involving interaction among members of a group of clients. (5-1-10)

13. Guardian. (5-1-10)

a. Under Title 15, Chapter 5, Part 2, Idaho Code, an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child; (5-1-10)

b. Under Title 66, Chapter 3 and 4, Idaho Code, an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a guardian for a person who is mentally ill or with a developmental disability; or (5-1-10)

c. Under Title 15, Chapter 5, Part 3, Idaho Code, an individual who has been appointed by a court of law to assist any incapacitated person to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. (5-1-10)

(BREAK IN CONTINUITY OF SECTIONS)

138. JOINT COMMISSION OR CARF ACCREDITATION.

The Department may approve programs or renew a program's certificate of approval based upon Joint Commission or CARF accreditation under the following conditions: (5-1-10)()

01. Organization Chart Verifying Staffing Credentials. Organization chart with verification that staff meet minimum credential or certification standards: (5-1-10)()

02. Criminal History and Background Checks. Satisfactory evidence that the owner, applicant, person proposed as executive director, ~~and all~~ employees, transfers, reinstated former employees, student interns, contractors, and volunteers, ~~and any other persons hired or contracted with after May 1, 2010~~, who provide direct care or services, ~~or have access to whose position requires regular contact with clients~~, have ~~successfully passed received~~ a criminal history and background check clearance, or have a waiver as described in Section 009 of these rules: (5-1-10)()

03. Tuberculosis Testing. The personnel policies and procedures must establish tuberculosis testing requirements. All staff members, volunteers, and trainees, must have upon employment, or engagement, and every three (3) years thereafter, a tuberculin skin test by the Mantoux method, or a blood test for tuberculosis infection. Staff members, volunteers, and trainees who are known to be a positive reactor may have a tuberculosis blood test or chest x-ray examination in lieu of a required tuberculin skin test. Personnel who have active tuberculosis must be restricted from employment and attendance at the facility until it is determined by a treating physician that the tuberculosis is non-infectious. Results of the testing must be documented in personnel records: and (7-1-13)()

04. Application Fee. Payment of non-refundable application or renewal fee as described in Sections 130 and 135 of these rules. (5-1-10)

(BREAK IN CONTINUITY OF SECTIONS)

210. PERSONNEL POLICIES AND PROCEDURES.

All alcohol and substance use disorders treatment or recovery support services programs must have and adhere to personnel policies and procedures that meet the following standards: (5-1-10)

01. Required Personnel Policies and Procedures. Personnel policies and procedures must be developed, adopted and maintained to promote the objectives of the program and provide for a sufficient number of qualified substance use disorders professionals, treatment and support staff to render the services of the program and provide quality care during all hours of operation. (5-1-10)

a. All personnel policies must be written, reviewed on an annual basis by the executive director and governing body, and signed and dated when reviewed or revised. (5-1-10)

b. The personnel policies must include procedures for recruiting, selecting, promoting and terminating staff. (5-1-10)

c. The personnel policies and procedures must apply to all employees, but may differ with respect to job classifications. (5-1-10)

d. The personnel policies and procedures must include information on the following: (5-1-10)

i. Employee benefits; (5-1-10)

ii. Recruitment and promotion; (5-1-10)

iii. Orientation; (5-1-10)

iv. Training and staff development; (5-1-10)

v. Employee grievances; (5-1-10)

vi. Safety and employee injuries; (5-1-10)

vii. Relationships with employee organizations; (5-1-10)

viii. Disciplinary systems; (5-1-10)

ix. Suspension and termination mechanisms; (5-1-10)

x. Wages, hours and salary administration; (5-1-10)

xi. Rules of conduct; (5-1-10)

xii. Lines of authority; and (5-1-10)

xiii. Performance appraisals and evaluation schedule. (5-1-10)

e. The personnel policies and procedures must include a mechanism for determining that all personnel are capable of performing assigned tasks. (5-1-10)

f. The personnel policies and procedures must ensure that personnel who have a communicable disease, infectious wound or other transmittable condition and who provide care or services to clients or have access to clients are required to implement protective infection control techniques in accordance with these rules. If protective infection control techniques are not implemented, personnel who have a communicable disease, infectious wound or other transmittable condition must not work until the infectious state is corrected and non-infectious; or be reassigned to other areas where contact with others is not expected and the likelihood of transmission of infection is absent; or seek other remedies that will avoid spreading the infection. (5-1-10)

- g.** The personnel policies and procedures must describe methods and procedures for supervising all personnel, including volunteers and students. (5-1-10)
- h.** The personnel policies and procedures must assure confidentiality of personnel records and specify who has access to personnel information. (5-1-10)
- i.** There must be documentation to verify that the policies and procedures are made available to and discussed with each employee at the time of hire and are made available to others upon request. (5-1-10)
- j.** A mechanism must be established for notifying employees of changes in the policies and procedures. (5-1-10)
- k.** The personnel policies and procedures must establish tuberculosis testing requirements for all staff members. Each employee must have upon employment, and every three (3) years thereafter, a tuberculin skin test by the Mantoux method, or tuberculosis blood test. An employee who is known to be a positive reactor may have a tuberculosis blood test or chest x-ray examination in lieu of a required tuberculin skin test. Personnel who have active tuberculosis must be restricted from employment and attendance at the facility until it is determined by a treating physician that the tuberculosis is non-infectious. Results of the testing must be documented in personnel record. (7-1-13)
- l.** The personnel policies and procedures must establish the requirement for CPR training and basic first aid training. A minimum of one (1) CPR and First Aid trained staff must be onsite during business hours. Staff responsible for client care must complete this training within ninety (90) days of employment. Additionally, the policies and procedures must establish the methods for renewal of CPR and first aid certification so that they remain current at all times. (5-1-10)
- m.** The personnel policies and procedures must establish the provision for criminal history background checks for all employees as described in Section 009 of these rules. (5-1-10)
- n.** The personnel policies and procedures must establish the provision of clinical supervision. (5-1-10)
- o.** Policy and procedures must be written that establish a drug free workplace. (5-1-10)
- 02. Hiring Practices.** Hiring practices must be specified in the written policies and procedures and must be consistent with the needs of the program and its services. (5-1-10)
- a.** The selection of personnel must be based on criteria that are demonstrably related to the job under consideration. (5-1-10)
- b.** Qualified substance use disorders professional staff must participate in determining what training, experience, and demonstrated competence will be required for assuming specific clinical service responsibility. (5-1-10)
- c.** There must be documentation to verify that qualified substance use disorders professionals meet all federal, state and local requirements for licensure, registration or certification. (5-1-10)
- 03. Equal Employment Opportunity.** No alcohol and substance use disorders treatment or recovery support services program approved under these rules will discriminate on the basis of race, creed, color, religion, age, gender, national origin, veteran, or disability, except in those instances where bona fide occupational qualifications exist. (5-1-10)
- 04. Responsible Staff Member to Implement Personnel Policies and Procedures.** The executive director must appoint a staff member to implement and coordinate personnel policies and procedures to accomplish the following tasks: (5-1-10)
- a.** Develop a written organizational plan for personnel services; (5-1-10)

- b. Maintain personnel records; (5-1-10)
 - c. Disseminate employment information to staff; (5-1-10)
 - d. Develop staff orientation programs; (5-1-10)
 - e. Implement procedures designed to assure compliance with federal, state and local laws related to employment practices; and (5-1-10)
 - f. Supervise the processing of employment-related forms. (5-1-10)
- 05. Contents of Personnel Record for Each Staff Member.** A personnel record must be kept on each staff member and must contain the following items: (5-1-10)
- a. Application for employment including a record of the employee's education or training and work experience. This may be supplemented by a resume; (5-1-10)
 - b. A written record of all findings from verbal contacts with references, and letters of recommendation; (5-1-10)
 - c. Verification of licensure, certification, registration or renewals; (5-1-10)
 - d. A signed and dated commitment to a code of ethics appropriate for alcohol and substance use disorders treatment staff; (5-1-10)
 - e. Number of hours per pay period, wage and salary information, including all adjustments; (5-1-10)
 - f. Performance appraisals or contract compliance evaluation; (7-1-13)
 - g. Counseling actions; (5-1-10)
 - h. Disciplinary actions; (5-1-10)
 - i. Commendations; (5-1-10)
 - j. Employee incident reports; (5-1-10)
 - k. A Verification of a Department criminal history and background check clearance, or a waiver issued by the Department as described in Section 009 of these rules; ~~(5-1-10)~~(____)
 - l. Results of tuberculosis testing, treatment taken, including dates of treatment, for tuberculosis infection; (7-1-13)
 - m. Verification of employee and emergency orientation procedures; and (5-1-10)
 - n. Verification of current cardiopulmonary resuscitation (CPR) training and basic first aid training, in accordance with the requirements under Subsection 01.l. of this rule and under Subsections 392.03, 520.03.d., and 520.04. For employees in direct care at Residential Social Detoxification Settings, verification of additional training specific to detoxification prior to being charged with the responsibility of client care. (7-1-13)
- 06. Job Description for a Position in the Program.** For each position in the program, there must be a written job description that specifies the duties and responsibilities of the position and the minimum level of education, training or related work experience required or needed to fulfill it. (5-1-10)
- a. Each job description must specify the following: (5-1-10)

- i. The position title; (5-1-10)
 - ii. The program, department, service, or unit; (5-1-10)
 - iii. Direct supervisor's title; (5-1-10)
 - iv. Positions supervised, if any; (5-1-10)
 - v. Clear descriptions of job functions; and (5-1-10)
 - vi. Clinical, administrative, and procedural responsibility and authority. (5-1-10)
- b.** Each job description must accurately reflect the job and must be revised whenever a change in qualifications, duties, supervision, or any other major job-related factor is made. (5-1-10)
- c.** Each job description must be comprehensive enough to enable a new employee to understand the position, job functions, responsibility, chain-of-command, and authority. (5-1-10)
- d.** Each job description must be sufficiently detailed to serve as a basis for performance appraisals. (5-1-10)
- 07. Performance Appraisals.** Performance appraisals must be conducted and must be related to the job description and job performance. (5-1-10)
- a.** The criteria used to evaluate job performance must be measurable and relate to the skills, knowledge and attitudes that the job requires. (5-1-10)
 - b.** Performance appraisals must be conducted, at a minimum, annually. (5-1-10)
 - c.** Performance appraisals must be in writing. (5-1-10)
 - d.** There must be documentation to verify that the employee has reviewed the evaluation and has had an opportunity to comment on it. The employee must sign the appraisal after review and comments are completed. (5-1-10)
 - e.** The program must develop policies and procedures to follow when there is a serious discrepancy between the staff member's actual job performance and the criteria for an acceptable level of job performance. (5-1-10)