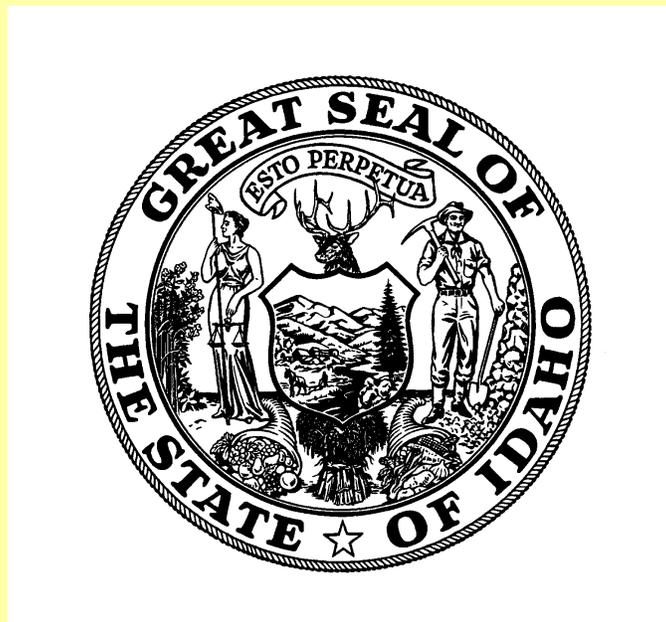


PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
House Health & Welfare Committee
65th Idaho Legislature
First Regular Session – 2019**



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2019

HOUSE HEALTH & WELFARE COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2019 Legislative Session

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.01.02 – EMERGENCY MEDICAL SERVICES (EMS) – RULE DEFINITIONS

DOCKET NO. 16-0102-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code, and Senate Bill 1310 (2018).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

Title 56 (EMS Act) requires that the minimum staffing requirement for patient care providers in ambulances in Idaho is an Emergency Medical Technician (EMT). The EMT is the second level of licensed Emergency Medical Services (EMS) patient care provider in Idaho. The first level is the Emergency Medical Responder (EMR). Senate Bill 1310 (2018) changes this requirement from an EMT to an EMR with an Ambulance Certification. The Ambulance Certification is a new process so the current EMS Rules are silent on the requirements that agencies must meet in order to staff an ambulance with an ambulance certified EMR. This rulemaking is needed to align the chapter with Senate Bill 1310 (2018). Specifically, these rule changes add a definition of “Ambulance Certification” to this chapter. Companion rule changes are being made simultaneously under Dockets 16-0103-1801 and 16-0107-1801.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 76 through 79](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wayne Denny at (208) 334-4000.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code, and Senate Bill 1310 (2018).

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

PUBLIC HEARINGS		
Wednesday, July 11, 2018 7:00 pm (MDT)	Friday, July 13, 2018 7:00 pm (MDT)	Monday, July 16, 2018 7:00 pm (MDT)
Salmon AEMTs 200 Fulton Suite 102 Salmon, ID 83467	Fremont Co. Annex 125 N. Bridge Street St. Anthony, ID 83445	Idaho Falls Fire Dept. 343 E Street Idaho Falls, ID 83402
WebEx Information:		
https://idhw.webex.com/idhw/ j.php?MTID=m573abc07708805b8 999012e7209e0b6f	https://idhw.webex.com/idhw/ j.php?MTID=mf6d0fcab1da9d055 9be5c74d73768bf0	https://idhw.webex.com/idhw/ j.php?MTID=m3a3185b39a60380 bf140e403b3289168
Meeting number: 809 114 798	Meeting number: 801 390 646	Meeting number: 803 619 635
Meeting password: 69JpfA6N (69573266 from phones)	Meeting password: uey27W3J (83927935 from phones)	Meeting password: rsxK386M (77953866 from phones)

**TELECONFERENCE CALL-IN (all meetings)
6:00 pm (PDT) / 7:00 pm (MDT)**

1-240-454-0879 USA Toll

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 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:

Title 56 (EMS Act) requires that the minimum staffing requirement for patient care providers in ambulances in Idaho is an Emergency Medical Technician (EMT). The EMT is the second level of licensed Emergency Medical Services (EMS) patient care provider in Idaho. The first level is the Emergency Medical Responder (EMR). Senate Bill 1310 (2018) changes this requirement from an EMT to an EMR with an Ambulance Certification. The Ambulance Certification is a new process so the current EMS Rules are silent on the requirements that agencies must meet in order to staff an ambulance with an ambulance certified EMR. This rulemaking is needed to align the chapter with Senate Bill 1310 (2018). Specifically, these rule changes add a definition of “Ambulance Certification” to this chapter. Companion rule changes are being made simultaneously under Dockets 16-0103-1801 and 16-0107-1801.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, specifically, this rulemaking is being done to align this chapter with Senate Bill 1310 (2018).

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Due to the tight timeframe for bringing these rules before the Board of Health and Welfare in May so that they can go into effect July 1, 2018, as per statute, formal negotiated rulemaking will not be conducted under notices in the Idaho Administrative Bulletin. However, informal negotiated rulemaking will be conducted with key stakeholders including volunteer EMS agencies and personnel, Bureau of EMS & Preparedness staff, the EMS Advisory Committee, and the Idaho EMS Physician Commission.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Wayne Denny at (208) 334-4000.

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 July 25, 2018.

DATED this 5th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0102-1801

010. DEFINITIONS AND ABBREVIATIONS A THROUGH B.

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply:

(7-1-14)

01. Advanced Emergency Medical Technician (AEMT). An AEMT is a person who: (7-1-14)

- a.** Has met the qualifications for licensure under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, “Emergency Medical Services (EMS) - Personnel Licensing Requirements”; (7-1-14)
- b.** Is licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)
- c.** Carries out the practice of emergency medical care within the scope of practice for AEMT determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission”; and (7-1-14)
- d.** Practices under the supervision of a physician licensed in Idaho. (7-1-14)
- 02. Advanced Life Support (ALS).** The provision of medical care, medication administration and treatment with medical devices that correspond to the knowledge and skill objectives in the Paramedic curriculum currently approved by the State Health Officer and within the scope of practice defined in IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission,” by persons licensed as Paramedics by the Department. (7-1-14)
- 03. Advanced Practice Registered Nurse.** A person who meets all the applicable requirements and is licensed to practice as an Advanced Practice Registered Nurse under Sections 54-1401 through 54-1418, Idaho Code. (7-1-14)
- 04. Advertise.** Communication of information to the public, institutions, or to any person concerned, by any oral, written, graphic means including handbills, newspapers, television, radio, telephone directories, billboards, or electronic communication methods. (7-1-14)
- 05. Affiliation.** The formal association that exists between an agency and those licensed personnel who appear on the agency’s roster, which includes active participation, collaboration, and involvement. Affiliation can be demonstrated by the credentialing of licensed personnel by the agency medical director. (7-1-14)
- 06. Affiliating EMS Agency.** The licensed EMS agency, or agencies, under which licensed personnel are authorized to provide patient care. (7-1-14)
- 07. Air Ambulance.** Any privately or publicly owned fixed wing aircraft or rotary wing aircraft used for, or intended to be used for, the transportation of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with Sections 56-1011 through 56-1023, Idaho Code, and specifications established in IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements.” (7-1-14)
- 08. Air Medical Agency.** An agency licensed by the Department that responds to requests for patient care and transportation from hospitals and EMS agencies using a fixed wing aircraft or rotary wing aircraft. (7-1-14)
- 09. Air Medical.** A service type available to a licensed air medical EMS agency that meets the requirements in IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements.” (7-1-17)
- 10. Air Medical Response.** The deployment of an aircraft licensed as an air ambulance to an emergency scene intended for the purpose of patient treatment and transportation. (7-1-14)
- 11. Air Medical Support.** A service type available to a licensed air medical EMS agency that meets the requirements in IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements.” (7-1-17)
- 12. Ambulance.** Any privately or publicly owned motor vehicle, or nautical vessel, used for, or intended to be used for, the transportation of sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with Sections 56-1011 through 56-1023, Idaho Code, and specifications established in IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements.” (7-1-14)

13. Ambulance-Based Clinicians. Licensed Registered Nurses and Advanced Practice Registered Nurses who are currently licensed under Sections 54-1401 through 54-1418, Idaho Code, and Physician Assistants who are currently licensed under Sections 54-1801 through 54-1841, Idaho Code. (7-1-14)

14. Ambulance Agency. An agency licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements,” operated with the intent to provide personnel and equipment for medical treatment at an emergency scene, during transportation or during transfer of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. (7-1-14)

15. Ambulance Certification. Designation issued by the EMS Bureau to a licensed EMR indicating that the EMR has successfully completed ambulance certification training, examination, and credentialing as required by the EMS Bureau. The ambulance certification allows a licensed EMR to serve as the sole patient care provider in an ambulance during transport or transfer. ()

156. Applicant. Any organization that is requesting an agency license under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements,” including the following: (7-1-14)

- a.** An organization seeking a new license; (7-1-14)
- b.** An existing agency that intends to: (7-1-14)
 - i.** Change the level of licensed personnel it utilizes; (7-1-14)
 - ii.** Change its geographic coverage area (except by agency annexation); or (7-1-14)
 - iii.** Begin or discontinue providing patient transport services. (7-1-14)

167. Assessment. The evaluation of a patient by EMS licensed personnel intending to provide treatment or transportation to that patient. (7-1-14)

178. Basic Life Support (BLS). The provision of medical care, medication administration, and treatment with medical devices which correspond to the knowledge and skill objectives in the EMR or EMT curriculum currently approved by the State Health Officer and within scope of practice defined in IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission,” by persons licensed as EMRs or EMTs by the Department. (7-1-14)

189. Board. The Idaho Board of Health and Welfare. (7-1-14)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.01.03 – EMERGENCY MEDICAL SERVICES (EMS) – AGENCY LICENSING REQUIREMENTS

DOCKET NO. 16-0103-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code, and Senate Bill 1310 (2018).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

Title 56 (EMS Act) requires that the minimum staffing requirement for patient care providers in ambulances in Idaho is an Emergency Medical Technician (EMT). The EMT is the second level of licensed Emergency Medical Services (EMS) patient care provider in Idaho. The first level is the Emergency Medical Responder (EMR). Senate Bill 1310 (2018) changes this requirement from an EMT to an EMR with an Ambulance Certification. The Ambulance Certification is a new process so the current EMS Rules are silent on the requirements that agencies must meet in order to staff an ambulance with an ambulance certified EMR. This rulemaking is needed to align the chapter with Senate Bill 1310 (2018). Specifically, these rule changes add a definition of “Ambulance Certification” to this chapter. Companion rule changes are being made simultaneously under Dockets 16-0102-1801 and 16-0107-1801.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 80 through 83](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wayne Denny at (208) 334-4000.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code, and Senate Bill 1310 (2018).

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

PUBLIC HEARINGS		
Wednesday, July 11, 2018 7:00 pm (MDT)	Friday, July 13, 2018 7:00 pm (MDT)	Monday, July 16, 2018 7:00 pm (MDT)
Salmon AEMTs 200 Fulton Suite 102 Salmon, ID 83467	Fremont Co. Annex 125 N. Bridge Street St. Anthony, ID 83445	Idaho Falls Fire Dept. 343 E Street Idaho Falls, ID 83402
WebEx Information:		
https://idhw.webex.com/idhw/ j.php?MTID=m573abc07708805b8 999012e7209e0b6f	https://idhw.webex.com/idhw/ j.php?MTID=mf6d0fcab1da9d055 9be5c74d73768bf0	https://idhw.webex.com/idhw/ j.php?MTID=m3a3185b39a60380 bf140e403b3289168
Meeting number: 809 114 798	Meeting number: 801 390 646	Meeting number: 803 619 635
Meeting password: 69JpfA6N (69573266 from phones)	Meeting password: uey27W3J (83927935 from phones)	Meeting password: rsxK386M (77953866 from phones)

**TELECONFERENCE CALL-IN (all meetings)
6:00 pm (PDT) / 7:00 pm (MDT)**

1-240-454-0879 USA Toll

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 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:

Title 56 (EMS Act) requires that the minimum staffing requirement for patient care providers in ambulances in Idaho is an Emergency Medical Technician (EMT). The EMT is the second level of licensed Emergency Medical Services (EMS) patient care provider in Idaho. The first level is the Emergency Medical Responder (EMR). Senate Bill 1310 (2018) changes this requirement from an EMT to an EMR with an Ambulance Certification. The Ambulance Certification is a new process so the current EMS Rules are silent on the requirements that agencies must meet in order to staff an ambulance with an ambulance-certified EMR. This rulemaking is needed to align the chapter with Senate Bill 1310 (2018). Specifically, these rule changes add language to this chapter that allows an EMS agency to use an ambulance-certified EMR to be the sole patient care provider. Companion rule changes are being made simultaneously under Dockets 16-0102-1801 and 16-0107-1801.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, specifically, this rulemaking is being done to align this chapter with Senate Bill 1310 (2018).

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Due to the tight timeframe for bringing these rules before the Board of Health and Welfare in May so that they can go into effect July 1, 2018, as per statute, formal negotiated rulemaking will not be conducted under notices in the Idaho Administrative Bulletin. However, informal negotiated rulemaking will be conducted with key stakeholders including volunteer EMS agencies and personnel, Bureau of EMS & Preparedness staff, the EMS Advisory Committee, and the Idaho EMS Physician Commission.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Wayne Denny at (208) 334-4000.

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 July 25, 2018.

DATED this 5th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0103-1801

202. EMS AGENCY -- CLINICAL LEVELS.

An EMS agency is licensed at one (1) or more of the following clinical levels depending on the agency's highest level of licensed personnel and life support services advertised or offered. (7-1-14)

01. Non-transport: (7-1-14)

- | | | |
|---------------|--|----------------|
| a. | EMR/BLS; | (7-1-14) |
| b. | EMT/BLS; | (7-1-14) |
| c. | AEMT/ILS; or | (7-1-14) |
| d. | Paramedic/ALS. | (7-1-14) |
| 02. | Ambulance: | (7-1-14) |
| a. | EMR (with Ambulance Certification)/BLS; | () |
| b. | EMT/BLS; | (7-1-14) |
| c. | AEMT/ILS; | (7-1-14) |
| d. | Paramedic/ALS; or | (7-1-14) |
| e. | Paramedic/ALS Critical Care. | (7-1-14) |
| 03. | Air Medical: | (3-29-17) |
| a. | Paramedic/ALS; or | (7-1-14) |
| b. | Paramedic/ALS Critical Care. | (7-1-14) |
| 04. | Air Medical Support; | (3-29-17) |
| a. | EMT/BLS; | (3-29-17) |
| b. | AEMT/ILS; or | (3-29-17) |
| c. | Paramedic/ALS. | (3-29-17) |

(BREAK IN CONTINUITY OF SECTIONS)

301. AMBULANCE EMS AGENCY -- PERSONNEL REQUIREMENTS.

Each ambulance agency must ensure that there are two (2) crew members on each patient transport or transfer. The crew member providing patient care, at a minimum, must be a licensed EMR with an ambulance certification or a licensed EMT. ~~(7-1-14)~~()

302. AIR MEDICAL EMS AGENCY -- PERSONNEL REQUIREMENTS.

Each air medical agency must ensure that there are two (2) crew members, not including the pilot, on each patient transport or transfer. The crew member providing patient care, at a minimum, must be a licensed EMR with an ambulance certification or a licensed EMT. An air medical agency must also demonstrate that the following exists. ~~(7-1-14)~~()

01. Personnel for Air Medical Agency. An Air Medical agency must ensure that each flight includes at a minimum, one (1) licensed registered nurse and one (1) Paramedic. Based on the patient's need, an exception for transfer flights may include a minimum of one (1) licensed respiratory therapist and one (1) licensed registered nurse, or two (2) licensed registered nurses. (3-29-17)

02. Personnel for Air Medical Support Agency. An Air Medical Support agency must ensure that each flight includes at a minimum, two (2) crew members with one (1) patient care provider licensed at or above the agency's highest clinical level of licensure. (3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

306. UTILIZING PHYSICIAN ASSISTANTS, LICENSED REGISTERED NURSES OR ADVANCED PRACTICE REGISTERED NURSES.

An AEMT/ILS ambulance agency may use a non-certified physician assistant, licensed registered nurse, or advanced practice registered nurse as the crew member who is providing ILS patient services, only when accompanied by a licensed EMR with an ambulance certification or a licensed EMT in the patient compartment of the transport vehicle.

~~(7-1-14)~~ ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.01.07 – EMERGENCY MEDICAL SERVICES (EMS) – PERSONNEL LICENSING REQUIREMENTS

DOCKET NO. 16-0107-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code, and Senate Bill 1310 (2018).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

Title 56 (EMS Act) requires that the minimum staffing requirement for patient care providers in ambulances in Idaho is an Emergency Medical Technician (EMT). The EMT is the second level of licensed Emergency Medical Services (EMS) patient care provider in Idaho. The first level is the Emergency Medical Responder (EMR). Senate Bill 1310 (2018) changes this requirement from an EMT to an EMR with an Ambulance Certification. The Ambulance Certification is a new process so the current EMS Rules are silent on the requirements that agencies must meet in order to staff an ambulance with an ambulance-certified EMR. This rulemaking is needed to align the chapter with Senate Bill 1310 (2018). Specifically, these rule changes add language to this chapter that describes the process that an EMR must follow to obtain the Ambulance Certification. Companion rule changes are being made simultaneously under Dockets 16-0102-1801 and 16-0103-1801.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 84 through 86](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wayne Denny at (208) 334-4000.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code, and Senate Bill 1310 (2018).

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

PUBLIC HEARINGS		
Wednesday, July 11, 2018 7:00 pm (MDT)	Friday, July 13, 2018 7:00 pm (MDT)	Monday, July 16, 2018 7:00 pm (MDT)
Salmon AEMTs 200 Fulton Suite 102 Salmon, ID 83467	Fremont Co. Annex 125 N. Bridge Street St. Anthony, ID 83445	Idaho Falls Fire Dept. 343 E Street Idaho Falls, ID 83402
WebEx Information:		
https://idhw.webex.com/idhw/j.php?MTID=m573abc07708805b8999012e7209e0b6f	https://idhw.webex.com/idhw/j.php?MTID=mf6d0fcab1da9d0559be5c74d73768bf0	https://idhw.webex.com/idhw/j.php?MTID=m3a3185b39a60380bf140e403b3289168
Meeting number: 809 114 798	Meeting number: 801 390 646	Meeting number: 803 619 635
Meeting password: 69JpfA6N (69573266 from phones)	Meeting password: uey27W3J (83927935 from phones)	Meeting password: rsxK386M (77953866 from phones)

**TELECONFERENCE CALL-IN (all meetings)
6:00 pm (PDT) / 7:00 pm (MDT)**

1-240-454-0879 USA Toll

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 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:

Title 56 (EMS Act) requires that the minimum staffing requirement for patient care providers in ambulances in Idaho is an Emergency Medical Technician (EMT). The EMT is the second level of licensed Emergency Medical Services (EMS) patient care provider in Idaho. The first level is the Emergency Medical Responder (EMR). Senate Bill 1310 (2018) changes this requirement from an EMT to an EMR with an Ambulance Certification. The Ambulance Certification is a new process so the current EMS Rules are silent on the requirements that agencies must meet in order to staff an ambulance with an ambulance-certified EMR. This rulemaking is needed to align the chapter with Senate Bill 1310 (2018). Specifically, these rule changes add language to this chapter that establishes the process that an EMR must follow to obtain the Ambulance Certification. Companion rule changes are being made simultaneously under Dockets 16-0102-1801 and 16-0103-1801.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, specifically, this rulemaking is being done to align this chapter with Senate Bill 1310 (2018).

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Due to the tight timeframe for bringing these rules before the Board of Health and Welfare in May so that they can go into effect July 1, 2018, as per statute, formal negotiated rulemaking will not be conducted under notices in the Idaho Administrative Bulletin. However, informal negotiated rulemaking will be conducted with key stakeholders including volunteer EMS agencies and personnel, Bureau of EMS & Preparedness staff, the EMS Advisory Committee, and the Idaho EMS Physician Commission.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Wayne Denny at (208) 334-4000.

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 July 25, 2018.

DATED this 5th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0107-1801

151. AMBULANCE CERTIFICATION.

01. Ambulance Certification is Required. In order for a licensed EMR to serve as the sole patient care provider who is delivering patient care, the EMR must possess a current ambulance certification issued by the EMS Bureau. ()

02. Ambulance Certification Requirements. A licensed EMR applying for and meeting the requirements defined in this section of rule will be issued an ambulance certification. The requirements for ambulance certification are: ()

a. Have a valid, unrestricted EMR license; ()

b. Have successfully completed an ambulance certification training program, examination, and credentialing; ()

03. Duration of Certification. Ambulance certifications are valid as long as the license holder is continually licensed. ()

04. Disciplinary and Corrective Action. The Department may impose disciplinary and corrective actions on an ambulance certification based on the procedures for administrative license actions described in IDAPA 16.01.12, “Emergency Medical Services (EMS) – Complaints, Investigations, and Disciplinary Actions.” ()

~~154~~2. -- 174. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.01 – RULES OF THE IDAHO TIME SENSITIVE EMERGENCY SYSTEM COUNCIL

DOCKET NO. 16-0201-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1024 through 56-1030, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

The incorporated document is being revised and updated to more current standards in the “Time Sensitive Emergency Standards Manual,” Edition 2019-1, that will become effective July 1, 2019, along with these rules. Additional changes are being made for clarification of the designation fee structure and for enforcement procedures for failure to make annual payments for facilities choosing to pay designation fees on a yearly basis.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 151 through 154](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 or any other funds related to this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Melissa Ball at (208) 334-2124.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 56-1024 through 56-1030, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 incorporated document is being revised and updated to more current standards in the “Time Sensitive Emergency Standards Manual,” Edition 2019-1, that will become effective July 1, 2019, along with these rules. Additional changes are being made for clarification of the designation fee structure and for enforcement procedures for failure to make annual payments for facilities choosing to pay designation fees on a yearly basis.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no anticipated fiscal impact to the state general fund or any other funds related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the proposed updates to the Time Sensitive Emergency Standards Manual and rules represent extensive input from stakeholders gathered during 2018 at meetings of the Time Sensitive Emergency Council and submitted as written comments throughout the year.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the “Time Sensitive Emergency System Standards Manual,” Edition 2019-1, is being incorporated to give it the force and effect of law. The current incorporated document is being updated from Edition 2017-1 to the revised Edition 2019-1.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Christian Surjan at (208) 334-6564.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0201-1801

004. INCORPORATION BY REFERENCE.

The Time Sensitive Emergency System Standards Manual, Edition 2017-1, is incorporated by reference in this chapter of rules. Copies of the manual may be obtained online at www.tse.idaho.gov or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249.

(7-1-17)()

(BREAK IN CONTINUITY OF SECTIONS)

200. DESIGNATION AND TSE ON-SITE SURVEY FEES.

01. Application With National Verification. An applicant applying for a TSE designation that is verified by a national accrediting body must submit the appropriate designation fees with its application for initial designation and renewal. The designation fees are for a three (3) year designation and are payable on an annual basis. TSE designation fees are not to exceed those listed in Subsections 200.03 through 200.05 of this rule. (3-24-16)

02. Application Without National Verification. An applicant who requires a TSE on-site survey prior to designation is required to pay the applicable on-site survey fee at the time of application. TSE designation and on-site survey fees are not to exceed those listed in Subsections 200.03 through 200.05 of this rule. (3-24-16)

03. Trauma Designation and TSE On-Site Survey Fees.

TRAUMA DESIGNATIONS 200.03	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE ON-SITE SURVEY FEE (Not to exceed)
LEVEL I	\$45,000 / \$15,000	\$3,000 / Not applicable with ACS verification
LEVEL II	\$36,000 / \$12,000	\$3,000 / Not applicable with ACS verification
LEVEL III	\$24,000 / \$8,000	\$3,000 / Not applicable with ACS verification
LEVEL IV	\$12,000 / \$4,000	\$1,500 / Not applicable with ACS verification
LEVEL V	\$3,000 / \$1,000	\$1,500
PEDIATRIC LEVEL I and LEVEL II	\$36,000 / \$12,000	\$3000 / Not applicable with ACS verification

(3-24-16)

04. Stroke Designation and TSE On-Site Survey Fees.

STROKE DESIGNATIONS 200.04	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE ON-SITE SURVEY FEE (Not to exceed)
LEVEL I	\$21,000 / \$7,000	\$3,000 / Not applicable with national <u>or acceptable state</u> verification
LEVEL II	\$12,000 / \$4,000	\$3,000 / Not applicable with national <u>or acceptable state</u> verification
LEVEL III	\$1,500 / \$500	\$3,000 / <u>Not applicable with national or acceptable state verification</u>

~~(3-24-16)~~()

05. STEMI (Heart Attack) Designation and TSE On-Site Survey Fees.

STEMI (HEART ATTACK) DESIGNATIONS 200.05	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE ON-SITE SURVEY FEE (Not to exceed)
LEVEL I	\$21,000 / \$7,000	\$3,000 / Not applicable with national <u>or acceptable state</u> verification
LEVEL II	\$1,500 / \$500	\$3,000 / <u>Not applicable with national or acceptable state verification</u>

~~(3-24-16)~~()

06. **Designation Fee Payment.** After completion of the TSE on-site survey, the TSE Council will notify the applicant facility of the designation determination by letter. The applicant facility must then pay either the annual designation fee or the entire three (3) year designation fee. After designation notification and upon the Department's receipt of the designation fee, designation is effective. The TSE Council will send a certificate of designation and confirmation of the designation period. Annual designation fees for those facilities paying yearly are due to the Department within thirty (30) days of the date of the invoice in order to maintain designation. Failure to meet this deadline will result in suspension or revocation of designation as provided in Section 285 of these rules.

~~(3-24-16)~~()

(BREAK IN CONTINUITY OF SECTIONS)

285. REVOCATION AND SUSPENSION.

01. **Revocation.** The TSE Council may revoke the designation of a center or a waiver when an owner, officer, director, manager, or other employee: (3-24-16)

a. Fails or refuses to comply with the provisions of these rules; (3-24-16)

b. Fails to make annual designation fee payment for those facilities paying yearly; ()

bc. Makes a false statement of material fact about the center’s capabilities or other pertinent circumstances in any record or matter under investigation for any purposes connected with these rules; (3-24-16)

ed. Prevents, interferes with, or attempts to impede in any way, the work of a representative of the TSE Council in implementing or enforcing these rules; (3-24-16)

de. Falsely advertises, or in any way misrepresents the facility’s ability to care for patients based on its designation status; (3-24-16)

ef. Is substantially out of compliance with these rules and has not rectified such noncompliance; (3-24-16)

fg. Fails to provide reports required by the TSE registry or the Department in a timely and complete fashion; or (3-24-16)

gh. Fails to comply with or complete a plan of correction in the time or manner specified. (3-24-16)

02. Suspension. The TSE Council may suspend a center’s designation or waiver when it finds, after investigation, that the center has engaged in a deliberate and willful violation of these rules, or that the public’s health, safety, or welfare is endangered. (3-24-16)

03. Notification and Appeal. When the TSE Council revokes or suspends a center’s designation or waiver, it must provide the center with a written notification of the action and the basis for the action. The notice will inform the center of the right to appeal and the procedure to appeal the action under the provisions in IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (3-24-16)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.02.02 – RULES OF THE IDAHO EMERGENCY MEDICAL SERVICES (EMS)
PHYSICIAN COMMISSION

DOCKET NO. 16-0202-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1013A and 56-1023, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

To best protect the public's health and safety, the EMS Physician Commission is revising its Standards Manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 155 and 156](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 related to this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wayne Denny at (208) 334-4000.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 56-1013A and 56-1023, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

To best protect the public's health and safety, the EMS Physician Commission is revising its Standards Manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

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 related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the content of the proposed updates to the EMS Physician Commission Standards Manual already represents extensive input from stakeholders gathered on an ongoing basis throughout the year and at the quarterly meetings of the EMS Physician Commission.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2019-1, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request from Idaho EMS. Once the docket has been finalized and adopted, the manual will be available online at: www.emspc.dhw.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0202-1801

004. INCORPORATION BY REFERENCE.

The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2018~~9~~-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the Internet at www.emspc.dhw.idaho.gov or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID, 83712-8249, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036. ~~(7-1-18)~~()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.08 – VITAL STATISTICS RULES

DOCKET NO. 16-0208-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-242, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

On March 5, 2018, the United States District Court for the District of Idaho issued a decision holding that Vital Records' practice of categorically denying applications for the amendment of gender markers on a birth certificate violated the constitutional rights of two transgender plaintiffs. *F.V. v. Barron, et al.*, Case No. 1:17-CV-170-CWD. The court ordered that Vital Records must begin accepting applications from transgender persons no later than April 6, 2018, and that it must process those applications in a constitutionally sound manner. This rule change establishes the standards and processes for such applications.

This rule change proposes to establish a process for the amendment of a gender marker on a birth certificate. Specifically, this rule change requires a notarized affidavit from the applicant; prohibits the marking of the replacement birth certificate as amended; and designates that a previous or concurrent name change must not show revision history, or be marked as amended.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the May 2, 2018, Idaho Administrative Bulletin, [Vol. 18-5, pages 60 through 64](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact James Aydelotte at (208) 334-4969.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is April 6, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-242, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 16, 2018.

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:

On March 5, 2018, the United States District Court for the District of Idaho issued a decision holding that Vital Records' practice of categorically denying applications for the amendment of gender markers on a birth certificate violated the constitutional rights of two transgender plaintiffs. *F.V. v. Barron, et al.*, Case No. 1:17-CV-170-CWD. The court ordered that Vital Records must begin accepting applications from transgender persons no later than April 6, 2018, and that it must process those applications in a constitutionally sound manner. This rule change establishes the standards and processes for such applications.

This rule change proposes to establish a process for the amendment of a gender marker on a birth certificate. Specifically, this rule change requires a notarized affidavit from the applicant; prohibits the marking of the replacement birth certificate as amended; and designates that a previous or concurrent name change must not show revision history, or be marked as amended.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, specifically, this rulemaking is being done to comply with a federal court order.

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 negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Negotiated rulemaking has been deemed not feasible since the Department must have the temporary rule in effect by April 6, 2018, as required by a federal court order.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact James Aydelotte at (208) 334-4969.

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 May 23, 2018.

Dated this 23rd day of March, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0208-1801

201. COMPLETION AND CORRECTION OF CERTIFICATES.

01. Correction of Minor Errors on Certificates During the First Year. Except as otherwise provided in these rules, correction of obvious errors or transposition of letters in words of common knowledge, may be made by the State Registrar or an authorized agent within the first year after the date of the event either upon individual observation or query or upon request of any person with a direct and tangible interest as defined in IDAPA 16.05.01, "Use and Disclosure of Department Records," Subsections 011.01 and 011.03, or any person listed in Subsection 201.06.d. of these rules. The method of correction will be determined by the State Registrar, and is not subject to the requirements of Subsection 201.08 of these rules. When such minor corrections are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change must be made on the certificate in such a way as not to become a part of any certification issued. The certificate must not be marked as amended. (3-30-07)

02. Amendment of Registrant's Given Names or Surname on Birth Certificates Within the First Year. (12-26-83)

a. Until the registrant's first birthday, given names or surname may be amended upon written notarized request of: (11-20-87)

i. Both parents; (12-26-83)

ii. The mother in the case of a child born out of wedlock and the father's name is not shown on the certificate; (4-5-00)

iii. The father in the case of the death or incapacity of the mother; (12-26-83)

iv. The mother in the case of the death or incapacity of the father; or (12-26-83)

v. The legal guardian or agency having legal custody of the registrant. (12-26-83)

b. The certificate must be marked as amended. (3-30-07)

03. Amendment of Registrant's Given Name on Birth Certificate After the First Year. (12-26-83)

a. After one (1) year from the date of birth, the provisions of Subsection 201.06 of these rules must be followed to amend the given name if the name was entered in error at the time of the preparation of the birth certificate. (3-30-07)

b. In all other cases, a legal change of name order from a court of competent jurisdiction must be

submitted to change a given name after one (1) year. (12-26-83)

04. Addition of Given Names on Birth Certificates. (12-26-83)

a. Until the registrant's seventh birthday, given names, for a child whose birth was recorded without given names, may be added to the certificate upon written notarized request of: (12-26-83)

i. Both parents; (12-26-83)

ii. The mother in the case of a child born out of wedlock and the father's name is not shown on the certificate; (4-5-00)

iii. The father in the case of the death or incapacity of the mother; (12-26-83)

iv. The mother in the case of the death or incapacity of the father; or (12-26-83)

v. The legal guardian or agency having legal custody of the registrant. (12-26-83)

b. The certificate shall be marked as amended. (12-26-83)

c. After the registrant's seventh birthday, the provisions of Subsection 201.06 of these rules must be followed to add a given name. (3-30-07)

05. Acknowledgment of Paternity. (12-26-83)

a. Subject to the provisions of Subsection 201.05.b. of these rules, a new certificate of birth will be prepared by the State Registrar for a child born out of wedlock in this state upon receipt of an affidavit of paternity signed by both parents and a written request by both parents. The child's surname will be changed on the certificate to that of the father if both parents so request. (3-30-07)

b. If another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction, or following adoption. (12-26-83)

c. The certificate must not be marked as amended. (3-30-07)

06. Amendment of Indicator of Gender. ()

a. The State Registrar must issue an amended Idaho certificate of live birth for the change of the indicator of sex upon receipt of the following: ()

i. For a registrant eighteen (18) years of age and older, a completed and notarized application on a form approved by the State Registrar that includes the following information: ()

(1) The identity of the applicant; ()

(2) The Idaho certificate of live birth to be amended; ()

(3) A declaration that the registrant's indicator of sex on the Idaho certificate of live birth does not match the registrant's gender identity; and ()

(4) The gender indicator as it should appear on the amended certificate of live birth. ()

ii. For a registrant under the age of eighteen (18), a completed and notarized application on a form approved by the State Registrar that includes the following information: ()

(1) The identity of the applicant; ()

- (2) The Idaho certificate of live birth to be amended; ()
- (3) A declaration that the registrant's indicator of sex on the Idaho certificate of live birth does not match the registrant's gender identity; ()
- (4) The gender indicator as it should appear on the amended certificate of live birth; and ()
- (5) The consent of all parents listed on the certificate of live birth or the consent of the registrant's legal guardian. If a parent is deceased, a copy of the death certificate must be submitted with the application. If a parent cannot be located, the applicant must also submit a certified copy of an order from an Idaho court of competent jurisdiction ordering that the consent of only one (1) parent is required. ()
- b.** The amended certificate of live birth issued under this rule must not be marked amended, must not refer to the original certificate of live birth sex, and must show the amended gender as requested. The certificate of live birth being amended, application, and court order if required, must be placed in a sealed file which may only be opened by an order from an Idaho court of competent jurisdiction. ()
- c.** A one-time name change made under an amendment of sex on the certificate of live birth, whether made prior to, at the time of, or subsequent to a change of indicator of gender on a certificate of live birth must not be marked amended and must not refer to the original birth certificate name or indicator of sex. Any additional name changes are governed by Subsections 201.08 and 201.09 of this rule. ()

067. All Other Amendments. Unless otherwise provided in these rules or in Section 39-250, Idaho Code, all other amendments to vital records must be supported by: (3-30-07)

- a.** An affidavit setting forth: (12-26-83)
- i.** Information to identify the certificate; (12-26-83)
- ii.** The incorrect data as it is listed on the certificate; and (3-30-07)
- iii.** The correct data as it should appear. (12-26-83)
- b.** If one (1) year has elapsed since the date the event occurred, one (1) or more items of documentary evidence which support the alleged facts and which were established at least five (5) years prior to the date of application for amendment or within seven (7) years of the date of the event. (12-26-83)
- c.** Any item of a medical nature can be amended only upon receipt of an affidavit from the person certifying such item, except that queries originating in the vital statistics office and subsequently completed and signed by the certifier may be used to complete or modify the reported cause of death. The State Registrar may require documentary evidence to substantiate the requested amendment. (3-30-07)
- d.** Applications to amend a specific vital record will be accepted as follows: (12-26-83)
- i.** An application to amend a birth certificate may only be made by one (1) or both of the parents, the legal guardian, the registrant if eighteen (18) years of age or older, or the individual responsible for filing the certificate. (12-26-83)
- ii.** An application to amend a death certificate may only be made by the informant, the next of kin, the funeral director or person acting as such who signed the death certificate, or the certifying physician or coroner. (12-26-83)
- iii.** An application to amend a stillbirth certificate may only be made by a person listed in Subsections 201.06.d.i. or 201.06.d.ii. of these rules. (3-30-07)
- iv.** An application to amend a marriage or divorce certificate may only be made by the custodian of the

official record from which the certificate was prepared, either of the parties to the marriage or divorce, or the individual responsible for filing the certificate. (12-26-83)

e. The State Registrar will evaluate the evidence submitted in support of any amendment, or require additional documentation. The State Registrar's decision and determination will be based upon serving the objectives of the vital statistics statutes and the best interests of the public. In the event the application is rejected or additional information is required, the State Registrar must advise the applicant of the reason for the action and the right to appeal pursuant to Section 39-250(5), Idaho Code. (3-30-07)

078. Amendment of the Same Item More Than Once. Once an item is amended on a vital record, that item can not be amended again except upon receipt of a court order from an Idaho court of competent jurisdiction. (3-30-07)

089. Methods of Amending Certificates. (12-26-83)

a. Certificates of birth, death, stillbirth, marriage, and divorce may only be amended by the State Registrar as follows: (12-26-83)

i. Preparing a new certificate showing the correct information when the State Registrar deems that the nature of the amendment so requires. The new certificate may be prepared on the form used for registering current events at the time of amendment. Except as provided elsewhere in these rules, the item number of the entry that was amended must be identified on the new certificate. In every case, except as provided elsewhere in these rules or the Idaho Code, the new certificate must show the date the amendment was made and be given the same state file number as the existing certificate. Signatures appearing on the existing certificate must be typed on the new certificate. (3-30-07)

ii. Completing the item in any case where the item was left blank on the existing certificate. (12-26-83)

iii. Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side. The line drawn through the original entry must not obliterate such entry. (3-30-07)

iv. A certificate of birth amended in accordance with the provisions of Section 39-250(4), Idaho Code, must be amended as prescribed in Subsection 201.08.a.iii. of these rules. The fact that the name was changed in accordance with a court order must be stated on the certificate. (3-30-07)

b. Unless prohibited by statute or rule, there must be inserted on the face of the certificate the date the amendment was made and the initials of the person making the change; the certificate must be marked as amended. (3-30-07)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.08 – VITAL STATISTICS RULES

DOCKET NO. 16-0208-1802

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-242, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

These rule changes eliminate language that is no longer relevant. They also eliminate the list of specific circumstances for a replacement certificate and replaces language so that any circumstance resulting in a replacement certificate will result in a fee being charged. No fees are being changed in this docket.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 124 through 126](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. The fee for changing birth certificates is currently being charged. The only costs have been personnel time to change forms, the website, etc.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact James Aydelotte, (208) 334-4969.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 39-242, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 Temporary Rule passed by the Board of Health and Welfare in response to the court order requires that a replacement certificate be established when an individual changes the indicator of gender on their birth certificate to reflect their gender identity. IDAPA 16.02.08.251.05.c. sets the fee for a list of actions that result in the establishment of a replacement certificate. The change being proposed eliminates the list so that any circumstance resulting in a replacement certificate will result in a fee being charged.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no anticipated fiscal impact to state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. The fee for changing birth certificates is currently being charged. The only costs have been personnel time to change forms, the website, etc.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is clarifying language regarding fees for changing birth certificates.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Aydelotte, (208) 334-4969.

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 26, 2018.

Dated this 2nd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0208-1802

251. FEES FOR COPIES, SEARCHES, AND OTHER SERVICES.

01. Certified Copies. The fee for the issuance of a certified copy of a certificate of death is sixteen dollars (\$16) per copy. This fee incorporates the additional one dollar (\$1) coroner training and education fund fee in accordance with Section 39-252(2), Idaho Code. The fee for the issuance of a certified copy of any other vital record is sixteen dollars (\$16) per copy. (7-1-15)

02. Searches. The fee for a search of the files for a record of any vital event when no record is found, no copy is made, or a special document search is requested, is sixteen dollars (\$16). (7-1-15)

03. Verifications. (7-1-15)

a. Except for Idaho state agencies and public health districts, the fee for manual or written verification of data from a certificate is ten dollars (\$10). (7-1-15)

b. The fees for electronic verification by the Department’s automated systems of data from a certificate of any vital event are based on the national pricing model as follows:

Fees for Electronic Verification	
National Monthly Transaction Volume	Charge per Verification Match Provided to Vital Records Agency
1 - 100,000	\$1.35
100,000 - 500,000	\$1.15
500,000 - 1,200,000	\$1.03
1,200,000+	\$0.87

(7-1-15)

~~**e.** The fee for electronic fact of death verification by the Department’s automated systems is three dollars (\$3). Fact of death verification involves comparing administrative data to Idaho death data and returning an indication of death. (7-1-15)~~

04. Statistical, Research, or Public Health Services. The State Registrar assesses the fee for statistical, research or public health services. The costs are calculated based upon the costs of retrieving the data and the costs of compiling, organizing, and printing the data. Cost may be reduced on a prorated basis to reflect the number of expected requests for the same information or service. (4-7-11)

05. Fees for Other Services. (4-7-11)

a. The fee for filing a report, certificate, or decree of adoption is twenty dollars (\$20). (7-1-15)

b. The fee for establishing a delayed certificate of any vital event is twenty-five dollars (\$25). (7-1-15)

c. ~~For any vital event, the~~ fee for establishing a new ~~or amended~~ certificate ~~of any vital event~~ due to a court order, a ~~paternity affidavit or rescission, or a subsequent marriage affidavit~~ replacement certificate, or an amended certificate is twenty dollars (\$20), except as specified under Subsection 251.05.g.ii. of this rule. (7-1-15)()

d. A service fee of three dollars (\$3), in addition to the sixteen dollars (\$16) for a certified copy of a death or stillbirth certificate, must be paid to the local deputy state registrar for securing each expedited certified copy of a vital record. (7-1-15)

e. The fee for filing a copy of “Request and Consent for Artificial Insemination” as required by Section 39-5403, Idaho Code, is ten dollars (\$10). (4-7-11)

f. The fee for a copy of a certificate of any vital event provided upon written request to local, states other than Idaho, or federal government agencies in accordance with Section 39-270(b), Idaho Code, is sixteen dollars (\$16). (7-1-15)

g. Fees for correction of a certificate of any vital event. (7-1-15)

i. The fee for a replacement certified copy of a certificate of any vital event when the incorrect certified copy is returned for exchange within sixty (60) days of a correction of an error is five dollars (\$5) per certified copy. (7-1-15)

ii. There is no charge for a correction of an error or errors on a certificate of any vital event when the required documentation is received within the first year after the date of the event. (7-1-15)

iii. The fee for correction of an error or errors on a certificate of any vital event, when the required documentation is received one (1) year or more after the date of the event, is twenty dollars (\$20) per submitted correction request. (7-1-15)

h. Fees for priority processing or special handling. (7-1-15)

i. A service fee of ten dollars (\$10) per certificate or document will be added for priority processing or special handling of a request for a certified copy or copies of a certificate of any vital event, a request for a disinterment permit, a request to file a registry form, or a request regarding another vital event related form or document, other than those identified in Subsection 251.05.h.ii. of this rule. This fee will be in addition to the current fee or fees for each certified copy, search, or filing requested, or any combination thereof. This fee is forfeited and a new service fee must be paid for priority processing or special handling in the event that the requester takes longer than ninety (90) days to respond to a request for additional information, or documentation, or both. (7-1-15)()

ii. A service fee of twenty-five dollars (\$25) per certificate will be added for priority processing to establish a new or amended certificate of any vital event due to a report, certificate or decree of adoption, delayed certificate filing, a court order, a paternity affidavit or rescission, a subsequent marriage affidavit or a correction of a certificate. This fee is in addition to the current fee or fees for the legal amendment processing or request for a certified copy or copies, or both. This fee is forfeited and a new legal amendment service fee must be paid for priority processing or special handling in the event that the requester takes longer than ninety (90) days to respond to a request for additional information or documentation or both. (7-1-15)()

iii. A hard copy fee of five dollars (\$5) per certificate will be added to the certified copy fee for issuance of a non-computer generated certified photocopy of a certificate of any vital event. Additional certified photocopies of the same certificate requested at the same time will be issued at the sixteen dollar (\$16) certified copy fee. (7-1-15)

06. Waiver of Fee Requirement. Fees may be waived for Idaho state agency and public health district administrative use requests. Statistical information prepared for public health planning purposes may be published and distributed without charge whenever the Director determines that the publication and distribution is in the public interest. (7-1-15)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.02.11 – IMMUNIZATION REQUIREMENTS FOR CHILDREN ATTENDING
LICENSED DAYCARE FACILITIES IN IDAHO

DOCKET NO. 16-0211-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-1118, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

Idaho legislators and interested stakeholders have identified the need to clarify this rule to ensure that the immunization exemption language therein is consistent with Section 39-1118, Idaho Code, and legislative intent.

This rulemaking adds language clarifying that parents requesting an immunization exemption may do so either on the Department's standard form or in a written, signed statement indicating their choice to exempt their child from immunization requirements.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, **Vol. 18-7, pages 87 and 88.**

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Kathryn Turner at (208) 334-5939.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is May 18, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 39-1118, Idaho Code.

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

PUBLIC HEARINGS		
Tuesday, July 10, 2018 10:00 am (PDT)	Thursday, July 12, 2018 10:00 am (MDT)	Friday, July 13, 2018 8:00 am (MDT)
Coeur d'Alene Hampton Inn Riverstone South meeting room 1500 West Riverstone Drive Coeur d'Alene, ID 83814	Meridian Courtyard by Marriott Balboa meeting room 1789 South Eagle Road Meridian, ID 83642	Idaho Falls Hampton Inn (at the mall) Hampton Bay meeting room 2500 Channing Way Idaho Falls, ID 83404

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 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:

Idaho legislators and interested stakeholders have identified the need to clarify this rule to ensure that the immunization exemption/opt-out language therein is consistent with Section 39-1118, Idaho Code, and legislative intent.

This rulemaking adds language clarifying that parents requesting an immunization exemption may do so either on the Department's standard form or in a written, signed statement indicating their choice to exempt their child from immunization requirements.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs. This temporary rule adds language to ensure alignment with Idaho statute.

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 negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is a temporary rule being published under very short time frames. However, it is being done in conjunction with negotiations with stakeholders and interested Idaho legislators.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rafe Hewett at (208) 334-5942.

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 Wednesday, July 25, 2018.

DATED this 7th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0211-1801

110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.

When supporting documentation is in the possession of the licensed daycare facility operator, a child who meets one (1) or both of the conditions in Subsections 110.01 and 110.02 of this rule, will be exempt from the required immunizations. (4-7-11)

01. Life or Health Endangering Circumstances. A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered. (4-7-11)

02. Religious or Other Objections. A signed statement of the parent, custodian, or legal guardian ~~on a form provided by the Department, that includes the following~~ that must be either: (4-7-11)()

a. On a standard Department form or similar form provided by the school; or ()

b. A signed statement that must include: ()

i. The ~~A~~name of child, and the child's date of birth; and (4-7-11)()

ii. A statement of objection on indicating that the child is exempt from immunization as provided in Section 110 of this rule for religious or other ~~grounds.~~ objections; and (1-25-79)()

iii. The signature of the parent, custodian, or legal guardian. ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.15 – IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN

DOCKET NO. 16-0215-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-4801 and 39-4802, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

Idaho legislators and interested stakeholders have identified the need to clarify this rule to ensure that the immunization exemption language therein is consistent with Section 39-4802, Idaho Code, and legislative intent.

This rulemaking adds language clarifying that parents requesting an immunization exemption may do so either on the Department's standard form or in a written, signed statement indicating their choice to exempt their child from immunization requirements.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 89 and 90](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Kathryn Turner at (208) 334-5939.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is May 18, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 Sections 39-4801 and 39-4802, Idaho Code.

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

PUBLIC HEARINGS		
Tuesday, July 10, 2018 10:00 am (PDT)	Thursday, July 12, 2018 10:00 am (MDT)	Friday, July 13, 2018 8:00 am (MDT)
Coeur d'Alene Hampton Inn Riverstone South meeting room 1500 West Riverstone Drive Coeur d'Alene, ID 83814	Meridian Courtyard by Marriott Balboa meeting room 1789 South Eagle Road Meridian, ID 83642	Idaho Falls Hampton Inn (at the mall) Hampton Bay meeting room 2500 Channing Way Idaho Falls, ID 83404

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 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:

Idaho legislators and interested stakeholders have identified the need to clarify this rule to ensure that the immunization exemption/opt-out language therein is consistent with Section 39-4802, Idaho Code, and legislative intent.

This rulemaking adds language clarifying that parents requesting an immunization exemption may do so either on the Department's standard form or in a written, signed statement indicating their choice to exempt their child from immunization requirements.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs. This temporary rule adds language to ensure alignment with Idaho statute.

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 negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is a temporary rule being published under very short time frames. However, it is being done in conjunction with negotiations with stakeholders and interested Idaho legislators.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rafe Hewett at (208) 334-5942.

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 Wednesday, July 25, 2018.

DATED this 7th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0215-1801

110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.

When supporting documentation is in the possession of school authorities, at the time of admission and before attendance, a child who meets one (1) or both of the following conditions in Subsections 110.01 and 110.02 of this rule, will not be required to receive the required immunizations. (4-7-11)

01. Life or Health Endangering Circumstances. A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered. (4-7-11)

02. Religious or Other Objections. A signed statement of the parent, custodian, or legal guardian ~~on a form provided by the Department, that includes the following~~ that must be either: (4-7-11)()

a. On a standard Department form or similar form provided by the school; or ()

b. A signed statement that must include: ()

i. The ~~A~~name of child, and the child's date of birth; and (4-7-11)()

ii. A statement of objection on indicating that the child is exempt from immunization as provided in Section 110 of this rule for religious or other ~~grounds.~~ objections; and (1-25-79)()

iii. The signature of the parent, custodian, or legal guardian. ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.15 – IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN

DOCKET NO. 16-0215-1802

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-4801 and 39-4802, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

A second dose (booster) of the meningococcal (MenACWY) vaccination is recommended by the Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices (ACIP) for children aged 16 years and older who received the 1st dose of vaccine as recommended at 11-12 years of age. Idaho does not currently require the booster dose for school entry. Requiring Idaho students receive a second dose of meningococcal (MenACWY) vaccine before entry into the 12th grade, or receive the vaccination before entry into 12th grade for those children who did not receive the recommended first dose, would help to prevent potential cases of meningococcal disease among young people in Idaho. A second vaccination (booster) received before the 12th grade helps to ensure immunity from meningococcal disease in young people as the immunity gained from the first dose of Meningococcal (MenACWY) vaccine has been shown to fade after five years.

This rulemaking adds a new school entry immunization requirement to require a second dose of meningococcal (MenACWY) vaccination before a student enters the 12th grade in Idaho, or the first dose if not previously vaccinated, starting with school year 2020-2021. If a student received their first dose of meningococcal (MenACWY) vaccine at 16 years of age or older, they will not be required to receive the second dose before entry into the 12th grade.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 127–132](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes travel for negotiated rulemaking, printing, and publication.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Kathryn Turner at (208) 334-5939.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 39-4801 and 39-4802, Idaho Code.

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

PUBLIC HEARING
Monday, September 17, 2018 - 9:30 a.m. (MDT)

Meridian Courtyard by Marriott
Balboa Meeting Room
1789 S. Eagle Road
Meridian, ID 83642

TELECONFERENCE CALL-IN
(Same date and time as above)

Toll Free: 1-877-820-7831
Participant Code: 137508

The hearing site 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:

A second dose (booster) of the meningococcal (MenACWY) vaccination is recommended by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) for children aged 16 years and older who received the 1st dose of vaccine as recommended at 11-12 years of age. Idaho does not currently require the booster dose for school entry. Requiring Idaho students receive a second dose of meningococcal (MenACWY) vaccine before entry into the 12th grade, or receive the vaccination before entry into 12th grade for those children who did not receive the recommended first dose, would help to prevent potential cases of meningococcal disease among young people in Idaho. A second vaccination (booster) received before the 12th grade helps to ensure immunity from meningococcal disease in young people as the immunity gained from the first dose of Meningococcal (MenACWY) vaccine has been shown to fade after five years.

This rulemaking adds a new school entry immunization requirement to require a second dose of meningococcal (MenACWY) vaccination before a student enters the 12th grade in Idaho, starting with school year 2020-2021. If a student received their first dose of meningococcal (MenACWY) vaccine at 16 years of age or older, they will not be required to receive the second dose before entry into the 12th grade.

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 negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes travel for negotiated rulemaking, printing, and publication.

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 July 4, 2018, Idaho Administrative Bulletin, [Volume 18-7, pages 91 and 92](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rafe Hewett at (208) 334-5942.

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 Wednesday, September 26, 2018.

Dated this 2nd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0215-1802

100. IMMUNIZATION REQUIREMENTS.

All immunizations listed in Subsections 100.01 through 100.04⁵ of this rule, are required of ~~children~~ students upon admission to kindergarten through grade twelve (12) of any Idaho public, private, or parochial school. Upon admission to preschool, ~~children~~ students must be age appropriately immunized with all immunizations listed in Subsections 100.01 through 100.03 of this rule. Immunizations must be administered according to the “ACIP Recommended Schedule,” incorporated by reference in Section 004 of these rules, unless fewer doses are medically recommended by a physician. These recommendations are available from the Department. Exemptions from these immunization requirements are provided in Section 110 of these rules. ~~(4-7-H)~~()

01. ~~Child~~ Student Born on or Before September 1, 1999. A ~~child~~ student born on or before September 1, 1999, must meet the following minimum immunization requirements prior to admission for these vaccines: one (1) dose of Measles, Mumps, and Rubella (MMR), four (4) doses of Diphtheria, Tetanus, Pertussis (DTaP), three (3) doses of Polio, and three (3) doses of Hepatitis B. ~~(4-7-H)~~()

02. ~~Child~~ Student After September 1, 1999 Through September 1, 2005. A ~~child~~ student born after September 1, 1999, through September 1, 2005, must meet the following minimum immunization requirements prior to admission for these vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of Diphtheria, Tetanus, and Pertussis (DTaP), three (3) doses of Polio, and three (3) doses of Hepatitis B. ~~(4-7-H)~~()

03. ~~Child~~ Student After September 1, 2005. A ~~child~~ student born after September 1, 2005, must meet the following minimum immunization requirements prior to admission for the following vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of Diphtheria, Tetanus, and Pertussis (DTaP), four (4) doses of Polio, three (3) doses of Hepatitis B, two (2) doses of Hepatitis A, and two (2) doses of Varicella. ~~(4-7-H)~~()

04. Seventh Grade Immunization Requirements. Effective with the 2011-2012 school year, and each year thereafter, in addition to the required immunizations listed in Section 100.01 through 100.03 of this rule, a ~~child~~ student must meet the following minimum immunization requirements prior to admission into the seventh (7th) grade for these vaccines: one (1) dose of Tetanus, Diphtheria, Pertussis Booster (Tdap), and one (1) dose of Meningococcal. This requirement will be extended to: 7th - 8th grade students in 2012, 7th - 9th grade students in 2013, 7th - 10th grade students in 2014, 7th - 11th grade students in 2015, and 7th - 12th grade students in 2016.

(4-7-11)()

05. Twelfth Grade Immunization Requirements. Effective at the start of the 2020-2021 school year, and each year thereafter, in addition to the required immunizations listed in Section 100.01 through 100.04 of this rule, students must meet the following minimum immunization requirements prior to admission into the twelfth (12th) grade: ()

a. Students who received their first dose of Meningococcal (MenACWY) vaccine before the age of sixteen (16) must have two (2) doses of Meningococcal (MenACWY) vaccine. ()

b. Students who received their first dose of Meningococcal (MenACWY) vaccine at sixteen (16) years of age and older, or those who have never received a dose, must have one (1) dose of Meningococcal (MenACWY) vaccine. ()

056. Summary of Immunization Requirements. (4-7-11)

a. Immunization requirements.

TABLE 100.056.a. SUMMARY OF IMMUNIZATION REQUIREMENTS			
Immunization Requirement*	Child Student born on or before September 1, 1999	Child Student born after September 1, 1999, through September 1, 2005	Child Student born after September 1, 2005
Measles, Mumps, and Rubella (MMR)	1 dose	2 doses	2 doses
Diphtheria, Tetanus, Pertussis	4 doses	5 doses	5 doses
Polio	3 doses	3 doses	4 doses
Hepatitis B	3 doses	3 doses	3 doses
Hepatitis A	0 doses	0 doses	2 doses
Varicella	0 doses	0 doses	2 doses

* Exemptions for immunization requirements are found in Section 110 of these rules.

(4-7-11)()

b. Seventh grade immunization requirements.

TABLE 100.056.b SUMMARY OF SEVENTH GRADE IMMUNIZATION REQUIREMENTS		
Immunization Requirement*	Child Student admitted to 7th grade prior to 2011-2012 school year	Child Student admitted to 7th grade during 2011-2012 school year and each year thereafter
Tetanus, Diphtheria, Pertussis (Tdap)	0 doses	1 dose
Meningococcal (MenACWY)	0 doses	1 dose

* Exemptions for immunization requirements are found in Section 110 of these rules.

(4-7-11)()

c. Twelfth grade immunization requirements.

TABLE 100.06.c. SUMMARY OF TWELFTH GRADE IMMUNIZATION REQUIREMENTS			
<u>Immunization Requirement*</u>	<u>Student admitted to 12th grade prior to the 2020-2021 school year</u>	<u>Student admitted to 12th grade during 2020-2021 school year and each year thereafter, if student received their first dose of Meningococcal (MenACWY) vaccine at 16 years of age or older, or if student has never received a dose</u>	<u>Student admitted to 12th grade during 2020-2021 school year and each year thereafter, if student received their first dose of Meningococcal (MenACWY) vaccine before the age of 16</u>
<u>Meningococcal (MenACWY)</u>	<u>1 dose</u>	<u>1 dose</u>	<u>2 doses</u>
<u>* Exemptions for immunization requirements are found in Section 110 of these rules.</u>			

()

101. COMPLIANCE.

The parent, custodian, or guardian of any child student who is to attend any public, private, or parochial school in Idaho must comply with the provisions contained in this chapter at the time of admission and before attendance.

(4-7-11)()

102. EVIDENCE OF IMMUNIZATION STATUS.

01. Immunization Record. Within the deadlines established in Section 101 of these rules, a parent, custodian, or guardian of each child student must present to school authorities an immunization record.

(4-7-11)()

02. Schedule of Intended Immunizations Form. A child student who has received at least one (1) dose of each required vaccine and is currently on schedule for subsequent immunizations may be conditionally admitted. School authorities, at the time of admission and before attendance, must have a schedule of intended immunizations form completed by a parent, custodian, or guardian for any child student who is not immunized, excepted, or exempted, and who is in the process of receiving, or has been scheduled to receive, the required immunizations. A form provided by the Department, or one similar, must include the following information:

(4-7-11)()

- a. Name and date of birth of child student; (4-7-11)()
- b. School and grade child student is enrolled in and attending; (4-6-05)()
- c. Types, numbers, and dates of scheduled immunizations to be administered; (4-7-11)
- d. Signature of the parent, custodian, or guardian; and (4-7-11)
- e. Signature of a licensed health care professional providing care to the child student. (4-7-11)()

03. Children Students Admitted to School and Failing to Continue the Schedule of Intended Immunizations. A child student, who does not receive the required immunizations as scheduled in Subsection 102.02 of this rule, will be excluded by school authorities until documentation of the administration of the required immunizations is provided to school authorities by the child's student's parent, custodian, or guardian.

(4-7-11)()

103. -- 104. (RESERVED)

105. EXCEPTIONS TO IMMUNIZATION REQUIREMENT.

When supporting documentation is in the possession of school authorities at the time of admission and before attendance, a *child student* who meets one (1) or both of the following conditions, will not be required to receive the required immunizations in order to attend school. (4-7-11)()

01. **Laboratory Proof.** Laboratory proof of immunity to any of the childhood diseases listed in Section 100 of these rules, will not be required to receive the immunization for that disease for which the *child student* is immune. (4-7-11)()

02. **Disease Diagnosis.** A *child student* who has a statement signed by a licensed health care professional stating that the *child student* has had varicella (chickenpox) disease diagnosed by a licensed health care professional upon personal examination, will not be required to receive the immunization for the diagnosed disease. (4-7-11)()

03. **Suspension of Requirement.** The Regulatory Authority may temporarily suspend one (1) or more of the immunization requirements listed in Section 100 of these rules, if the Regulatory Authority determines that suspension of the requirement is necessary to address a vaccine shortage or other emergency situation in the state. The Regulatory Authority will suspend a requirement for the length of time needed to remedy the vaccine shortage or emergency situation. (4-7-11)

106. -- 109. (RESERVED)

110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.

When supporting documentation is in the possession of school authorities, at the time of admission and before attendance, a *child student* who meets one (1) or both of the following conditions in Subsections 110.01 and 110.02 of this rule, will not be required to receive the required immunizations. (4-7-11)()

01. **Life or Health Endangering Circumstances.** A signed statement of a licensed physician that the *child's student's* life or health would be endangered if any or all of the required immunizations are administered. (4-7-11)()

02. **Religious or Other Objections.** A signed statement of the parent, custodian, or guardian on a form provided by the Department, that includes the following: (4-7-11)

a. Name of *child student*, date of birth; and (4-7-11)()

b. A statement of objection on religious or other grounds. (1-25-79)

111. -- 149. (RESERVED)

150. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.

01. **Noncompliance.** Any *child student* not in compliance with this chapter upon admission to any Idaho public, private, or parochial school, will be denied attendance by school authorities, unless the *child student* is excepted or exempted from these immunization requirements as provided in Sections 105 and 110 of these rules. The regulatory authority may exclude any *child student* who does not meet the requirements in this chapter and who has not been excluded from school. (4-7-11)()

02. **Length of Exclusion.** Any *child student* denied attendance in accordance with Subsection 150.01 of this rule, will not be allowed to attend any Idaho public, private or parochial school until the *child student* is in compliance with the requirements of this chapter. (4-2-08)()

03. **Exempted Children Students.** A *child student* exempted under Section 110 of these rules, may be excluded by the regulatory authority in the event of a disease outbreak under IDAPA 16.02.10, "Idaho Reportable

Diseases.”

~~(4-7-11)~~()

151. -- 199. (RESERVED)

200. REPORTS BY SCHOOL AUTHORITIES.

01. Responsibility and Timeliness. School authorities must submit a report of each school’s immunization status, by grade, to the Department on or before the first day of November each year. (4-6-05)

02. Form and Content of Report. Each school report must include the following information and be submitted on a Department form or electronically: (4-7-11)

- a. Inclusive dates of reporting period; (10-13-92)
- b. Name and address of school, school district and county; (4-6-05)
- c. Grade being reported and total number of children students enrolled in the grade; ~~(4-6-05)~~()
- d. The name and title of the person completing the report form. (4-6-05)
- e. Number of children students who meet all of the required immunizations listed in Section 100 of these rules; ~~(4-6-05)~~()
- f. Number of children students who do not meet all of the required number of immunizations listed by specific immunization type; ~~(4-6-05)~~()
- g. Number of children students who do not meet the immunization requirement, but are in the process of receiving the required immunizations; and ~~(4-6-05)~~()
- h. Number of children students who claimed exemption to the required immunizations as allowed in Section 110 of these rules. ~~(4-6-05)~~()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.03.04 – RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Section 56-203, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

These rules are being updated to provide clarification for self-employment and update obsolete language. The rules as currently written cause confusion for participants and staff when determining eligibility. These rules define self-employment and include referral processes for the state's mandatory employment and training program. Updates are also being made for participation in the Workforce Investment Act (WIA), now known as the Workforce Innovation and Opportunity Act (WIOA) programs.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 159-168](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 as a result of this rulemaking. The Idaho Food Stamp Program is a federally funded program.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kristin Matthews at (208) 334-5553.

Dated this 14th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 56-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

These rules are being updated to provide clarification for self-employment and update obsolete language. The rules as currently written cause confusion for participants and staff when determining eligibility. These rules define self-employment and include a referral process for the state's mandatory employment and training program. Updates are also being made for participation in the Workforce Investment Act (WIA), now known as the Workforce Innovation and Opportunity Act (WIOA) programs.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no anticipated fiscal impact to the state general fund as a result of this rulemaking. The Idaho Food Stamp Program is a federally funded program.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and deemed not feasible as these changes are being made to reflect updated policies pertaining to the Food Stamp Program based on recommendations from our federal and state partners.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kristin Matthews at (208) 334-5553.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1801

012. DEFINITIONS M THROUGH Z.

For the Food Stamp Program, the following definitions apply: (4-11-06)

01. Migrant Farmworker Household. A migrant farmworker household has a member who travels from community to community to do agricultural work. (4-6-05)

02. Minimum Utility Allowance (MUA). Utility deduction given to a food stamp household that has a cost for one (1) utility that is not heating, cooling, or telephone. (3-29-10)

03. Nonexempt. A household member who must register for and participate in the JSAP program. A household member who must register for work. (6-1-94)

04. Nonprofit Meal Delivery Service. A political subdivision or a private nonprofit organization, which prepares and delivers meals, authorized to accept Food Stamps. (6-1-94)

05. Overissuance. The amount Food Stamps issued exceeds the Food Stamps a household was eligible to receive. (6-1-94)

06. Parental Control. Parental control means that an adult household member has a minor in the household who is dependent financially or otherwise on the adult. Minors, emancipated through marriage, are not under parental control. Minors living with children of their own are not under parental control. (4-6-05)

07. Participant. A person who receives Food Stamp benefits. (4-6-05)

08. Program. The Food Stamp Program created under the Food Stamp Act and administered in Idaho by the Department. (6-1-94)

09. Public Assistance. Public assistance means Temporary Assistance for Families in Idaho (TAFI), and Aid to the Aged, Blind, and Disabled (AABD). (4-6-05)

10. Recertification. A recertification is a process for determining ongoing eligibility for Food Stamps. (4-11-06)

11. Retail Food Store. A retail food store, for Food Stamp purposes means: (6-1-94)

a. An establishment, or recognized department of an establishment, or a house-to-house food trade route, whose food sales volume is more than fifty percent (50%) staple food items for home preparation and consumption. (6-1-94)

b. Public or private communal dining facilities and meal delivery services. (6-1-94)

c. Private nonprofit drug addict or alcohol treatment and rehabilitation programs. (6-1-94)

d. Public or private nonprofit group living arrangements. (6-1-94)

e. Public or private nonprofit shelters for battered women and children. (6-1-94)

f. Private nonprofit cooperative food purchasing ventures, including those whose members pay for food prior to the receipt of the food. (6-1-94)

- g.** A farmers' market. (6-1-94)
- h.** An approved public or private nonprofit establishment which feeds homeless persons. The establishment must be approved by FCS. (7-1-98)
- 12.** **Sanction.** A penalty period when an individual is ineligible for Food Stamps. (3-30-07)
- 13.** **Seasonal Farmworker Household.** A seasonal farmworker household has a member who does agricultural work of a seasonal or other temporary nature. (4-6-05)
- 14.** **Self-Employment.** Self-employment is the process of actively earning income directly from one's own business, trade, or profession. To be considered self-employed, a person is responsible for obtaining or providing a service or product that generates or is expected to generate income. Self-employment applies only to a business owned by one (1) person. A business owned by more than one (1) person is considered employment, not self-employment. ()
- 145.** **Spouse.** Persons who are legally married under Idaho law. (4-4-13)
- 156.** **Standard Utility Allowance (SUA).** Utility deduction given to a food stamp household that has a cost for heating or cooling. (4-11-06)
- 167.** **State.** Any of the fifty (50) States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands and the Virgin Islands of the United States. (6-1-94)
- 178.** **State Agency.** The Idaho Department of Health and Welfare. (6-1-94)
- 189.** **Student.** An individual between the ages of eighteen (18) and fifty (50), physically and intellectually fit, and enrolled at least half-time in an institution of higher education. (6-1-94)
- 1920.** **Supplemental Security Income (SSI).** Monthly cash payments under Title XVI of the Social Security Act. Payments include state or federally administered supplements. (4-11-06)
- 201.** **Systematic Alien Verification for Entitlements (SAVE).** The federal automated system that provides immigration status needed to determine an applicant's eligibility for many public benefits, including Food Stamps. (4-11-06)
- 242.** **Telephone Utility Allowance (TUA).** Utility deduction given to a Food Stamp household that has a cost for telephone services and no other utilities. (3-29-10)
- 223.** **Timely Notice.** Notice that is mailed via the U. S. Postal Service, or electronically, at least ten (10) days before the effective date of an action taken by the Department. (3-29-12)
- 234.** **Twelve Month Contact.** For households that have a twenty-four (24) month certification period, Department staff contact the household during the twelfth month of the certification period for the purpose of determining continued eligibility. (4-6-05)
- 245.** **Tribal General Assistance.** Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. This cash is intended to promote the health and well-being of recipients. (4-11-06)
- 256.** **Verification.** The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)
- 267.** **Verified Upon Receipt.** Food stamp benefits are adjusted on open food stamp cases when information is received from "verified upon receipt" sources. Information "verified upon receipt" is received from a manual query or automated system match with the Social Security Administration or Homeland Security query for citizenship status. (3-30-07)

2-78. Written Notice. Correspondence that is generated by any method including handwritten, typed, or electronic, delivered to the customer by hand, U.S. Mail, professional delivery service, or by any electronic means. The terms “notice” and “written notice” are used interchangeably. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

014. ABBREVIATIONS I THROUGH Z.

For the purposes of the Food Stamp Program, the following abbreviations are used. (4-11-06)

- 01. ICCP.** Idaho Child Care Program. (4-11-06)
- 02. ICSES.** Idaho Child Support Enforcement System. (4-11-06)
- 03. IEVS.** Income and Eligibility Verification Systems. (6-1-94)
- 04. IHE.** Inadvertent household error. (6-1-94)
- 05. INS.** Immigration and Naturalization Service, in 2003, became the United States Citizenship and Immigration Service (USCIS), a Division of Homeland Security. (4-11-06)
- 06. INA.** Immigration and Nationality Act. (4-6-05)
- 07. IPV.** Intentional program violation. (6-1-94)
- 08. IRS.** Internal Revenue Service. (6-1-94)
- 09. JSAP.** Job Search Assistance Program. (6-1-94)
- 10. LUA.** Limited utility allowance. (4-11-06)
- 11. MUA.** Minimum utility allowance. (4-11-06)
- 12. NADA.** National Automobile Dealer’s Association. (4-11-06)
- 13. PA.** Public Assistance. (6-1-94)
- 14. RSDI.** Retirement, Survivors, Disability Insurance received from SSA. (6-1-94)
- 15. SAVE.** Systematic Alien Verification for Entitlements. (4-11-06)
- 16. SAW.** Special Agricultural Worker. (6-1-94)
- 17. SDX.** State Data Exchange. (6-1-94)
- 18. SQC.** State Quality Control. (6-1-94)
- 19. SRS.** Self Reliance Specialist. (7-1-98)
- 20. SUA.** Standard utility allowance. (4-11-06)
- 21. SSA.** Social Security Administration. (6-1-94)
- 22. SSI.** The Federal Supplemental Security Income Program for the aged, blind or disabled. (6-1-94)

- | | | |
|-----|--|--------------------------|
| 23. | SSN. Social Security number. | (6-1-94) |
| 24. | SWICA. State Wage Information Collection Agency. | (6-1-94) |
| 25. | TAFI. Temporary Assistance for Families in Idaho. | (7-1-98) |
| 26. | TOP. Treasury Offset Program. | (3-15-02) |
| 27. | TUA. Telephone Utility Allowance. | (3-29-10) |
| 28. | UI. Unemployment Insurance. | (6-1-94) |
| 29. | USDA. United States Department of Agriculture. | (6-1-94) |
| 30. | VA. The Veterans Administration. | (6-1-94) |
| 31. | WIOA. The Workforce <i>Investment Innovation and Opportunity</i> Act. | (3-15-02) () |
| 32. | WIC. The special supplemental Food Program for Women, Infants, and Children. | (6-1-94) |

(BREAK IN CONTINUITY OF SECTIONS)

227. EXEMPTIONS FROM JSAP.

Exemptions from JSAP are listed in Subsections 227.01 through 227.12 of these rules. (5-3-03)

01. Parents or Caretakers of a Child Under Six Years of Age. A parent or caretaker responsible for the care of a dependent child under age six (6) is exempt from JSAP. If the child becomes six (6) during the certification period, the parent or caretaker must register for JSAP at the next scheduled six-month or twelve-month contact or recertification, unless exempt for another reason. (3-29-12)

02. Parents and Caretakers of an Incapacitated Person. A parent or caretaker responsible for the care of a person incapacitated due to illness or disability is exempt from JSAP. (5-3-03)

03. Persons Who Are Incapacitated. A person who is physically or intellectually unfit for employment is exempt from JSAP. If a disability is claimed which is not evident, proof to support the disability can be required. Acceptable proof includes receipt of permanent or temporary disability benefits, or a statement from a physician or licensed or certified psychologist. (5-3-03)

04. Students Enrolled Half Time. A student who is eighteen (18) years or older is exempt from JSAP if: (4-11-06)

a. He is enrolled at least half-time in any institution of higher learning and if he meets the definition of an eligible student in Section 282 of these rules; or (5-3-03)

b. He is enrolled at least half-time in any other recognized school or training program. (5-3-03)

c. He remains enrolled during normal periods of class attendance, vacation, and recess. If he graduates, enrolls less than half-time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), he must register for work at the next scheduled six-month or twelve-month contact or recertification. (3-29-12)

05. SSI Applicants. A person who is applying for SSI is exempt from JSAP until SSI eligibility is determined. (5-3-03)

- 06. Persons Who Are Employed.** A person who is employed is exempt from JSAP if: (5-3-03)
- a. He is working at least thirty (30) hours per week; or (5-3-03)
 - b. He is receiving earnings equal to the Federal minimum wage multiplied by thirty (30) hours; or (5-3-03)
 - c. He is a migrant or seasonal farm worker under contract or agreement to begin employment within thirty (30) days. (5-3-03)
- 07. Persons Who Are Self-Employed.** A person who is self-employed is exempt from JSAP ~~if~~ **when** the **person** is working a minimum of thirty (30) hours per week ~~or~~ **and** is receiving earnings equal to or greater than the Federal minimum wage multiplied by thirty (30) hours. (~~5-3-03~~)()
- 08. Addicts or Alcoholics.** A regular participant in a drug or alcohol treatment and rehabilitation program is exempt from JSAP. (6-1-94)
- 09. Unemployment Insurance (UI) Applicant/Recipient.** A person receiving UI is exempt from JSAP. A person applying for, but not receiving UI, is exempt from JSAP if he is required to register for work with the Department of Commerce and Labor as part of the UI application process. (5-3-03)
- 10. Children Under Age Sixteen.** A child under age sixteen (16) is exempt from JSAP. A child who turns sixteen (16) within a certification period must register for JSAP at the six-month or twelve-month contact or recertification, unless exempt for another reason. (3-29-12)
- 11. Persons Age Sixteen or Seventeen.** A household member age sixteen (16) or seventeen (17) is exempt from JSAP if he is attending school at least half-time, or is enrolled in an employment and training program, including GED, at least half-time. (5-3-03)
- 12. Participants Age Sixty or Older.** A participant age sixty (60) or older is exempt from JSAP. (5-3-03)
- 13. Pregnant Women.** A pregnant woman in her third trimester is exempt from JSAP. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

251. ABLE BODIED ADULTS WITHOUT DEPENDENTS (ABAWD) WORK REQUIREMENT.

To participate in the Food Stamp program, a person must meet one (1) of the conditions in Subsections 251.01 through 251.05 of this rule. A person who does not meet one (1) of these conditions may not participate in the Food Stamp program as a member of any household for more than three (3) full months (consecutive or otherwise) in a fixed thirty-six (36) month period. (3-29-17)

- 01. Work at Least Eighty Hours per Month.** The person must work at least eighty (80) hours per month. The definition of work under Section 251 of this rule is any combination of: (5-3-03)
- a. Work in exchange for money. (3-15-02)
 - b. Work in exchange for goods or services, known as “in-kind” work. (3-15-02)
 - c. Unpaid work, with a public or private non-profit agency. (3-15-02)
- 02. Participate in JSAP or Another Work Program.** The person must participate in and comply with the requirements of the JSAP program (other than job search or job readiness activities), the WIOA program, a program under Section 236 of the Trade Act of 1974, or another work program recognized by the Department. The person must participate for at least eighty (80) hours per month. (~~3-15-02~~)()

03. Combination of Work and Work Programs. The person must work and participate in a work program. Participation in work and work programs must total at least eighty (80) hours per month. (3-15-02)

04. Participate in Work Opportunities. The person must participate in and comply with the requirements of a Work Opportunities program. (7-1-99)

05. Residents of High Unemployment Areas. ABAWDs residing in a county identified as having high unemployment or lack of jobs are not subject to the three (3) month limitation of benefits. ABAWDs residing in these counties are subject to JSAP work requirement but will not lose Food Stamp eligibility after three (3) months if they participate fewer than eighty (80) hours per month. An ABAWD residing in a high unemployment area must participate according to his plan. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

255. REGAINING ELIGIBILITY.

ABAWDs whose three (3) month eligibility expires may regain eligibility for Food Stamps. During any thirty (30) consecutive days, the person must meet one (1) of the work requirements in Subsections 255.01 and 255.02. Prorate Food Stamp benefits from the date the person regains eligibility. ABAWDs must continue to meet the work requirement to get Food Stamps, or meet conditions for the three (3) additional months. There is no limit on the number of times an ABAWD may regain and maintain eligibility by meeting the work requirement. (3-15-02)

01. Work Eighty Hours. The person must work eighty (80) or more hours per month. (3-15-02)

02. Participate in JSAP. The person must participate in and comply with the requirements of the JSAP program (other than job search or job search training), the WIOA program, or a program under section 236 of the Trade Act of 1974 for eighty (80) or more hours per month. ~~(3-15-02)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

284. DETERMINING STUDENT ELIGIBILITY.

To be eligible for Food Stamps, a student must meet at least one (1) of the criteria listed below: (6-1-94)

01. Employment. (3-29-12)

a. The student is employed a minimum of eighty (80) hours per month and is paid for such employment; or (3-29-12)

b. The student is self-employed a minimum of eighty (80) hours per month; and (3-29-12)

c. The student must earn at least the Federal minimum wage times eighty (80) hours. (3-29-12)

02. Work Study Program. The student is in a State or Federally financed work study program during the regular school year. The student exemption begins the month the school term begins, or the month the work study is approved, whichever is later. The exemption continues until the end of the month the school term ends, or it becomes known the student has refused an assignment. The student work study exemption stops when there are breaks of a full calendar month or longer between terms, without approved work study. The exemption only applies to months the student is approved for work study. (7-1-97)

03. Caring for Dependent Child. The student is responsible for the care of a dependent household member under age six (6). There must not be another adult in the household available to care for the child. Availability of adequate child care is not a factor. The student is responsible for the care of a dependent household member at least age six (6) but under age twelve (12). The Department must determine adequate child care is not

available to enable the student to attend class and satisfy the twenty (20) hour work requirement. The student must be a single parent responsible for the care of a dependent child under the age of twelve (12). The student is enrolled full-time in an institution of higher education. Full-time enrollment is determined by the institution. Availability of adequate child care is not a factor. (6-1-94)

04. TAFI Participant. The student gets cash benefits from the TAFI program. (7-1-98)

05. Training. The student is assigned to or placed in an institution of higher education through or complying with: ~~the WIOA program;~~ ~~the JOBS program;~~ ~~the JSAP program;~~ ~~a~~ program under Section 236 of the Trade Act of 1974, ~~or a~~ program for employment and training operated by a State or local government. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

382. RESOURCES EXCLUDED BY FEDERAL LAW.

Resources listed in Section 382 are excluded by Federal law: (3-15-02)

01. P.L. 91-646. Reimbursements under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. (6-1-94)

02. P.L. 92-203. The Alaska Native Claims Settlement Act. (6-1-94)

03. P.L. 93-134 as Amended by P.L. 103-66. Effective January 1, 1994, interest of individual Indians in trust or restricted lands. (6-1-94)

04. P.L. 93-288 as Amended by P.L. 100-707. Payments from Disaster Relief and Emergency Assistance. (6-1-94)

05. P.L. 93-531. Relocation assistance to Navajo and Hopi tribal members. (6-1-94)

06. P.L. 94-114. The submarginal lands held in trust by the U.S. for certain Indian tribal members. (6-1-94)

07. P.L. 94-189. The Sac and Fox Indian Claims Agreement. (6-1-94)

08. P.L. 94-540. Funds to the Grand River Band of Ottawa Indians. (6-1-94)

09. P.L. 95-433. The Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission. (6-1-94)

10. P.L. 96-420. The Passamaquoddy Tribe and Penobscot Nation funds paid under the Maine Indian Claims Settlement Act of 1980. (6-1-94)

11. P.L. 97-403. Payments to the Turtle Mountain Band of Chippewas, Arizona. (6-1-94)

12. P.L. 97-408. Payments to the Blackfeet, Gros Ventre and Asiniboine Tribes, Montana and the Papago Tribe, Arizona. (6-1-94)

13. P.L. 98-64 and P.L. 97-365. Up to two thousand dollars (\$2,000) of any per capita payment, and any purchases made with such payment, from funds held in trust by the Secretary of the Interior. (6-1-94)

14. P.L. 98-123. Funds awarded to members of the Red Lake Band of Chippewa Indians. (6-1-94)

15. P.L. 98-500. Funds provided to heirs of deceased Indians under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of two thousand dollars (\$2,000). (6-1-94)

16. **P.L. 99-264.** Payments to the White Earth Band of Chippewa Indian Tribe, Michigan. (6-1-94)
17. **P.L. 99-346.** Payments to the Saginaw Chippewa Indian Tribe, Michigan. (6-1-94)
18. **P.L. 99-498 and P.L. 102-523 Student Loans.** Financial assistance funded in whole or in part under Title IV of the Higher Education Act. (6-1-94)
19. **P.L. 101-41.** Payments to the Puyallup Tribe of Indians, Washington. (6-1-94)
20. **P.L. 101-277.** Payments to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida and the Independent Seminole Indians of Florida. (6-1-94)
21. **P.L. 101-426.** Payments from the Radiation Exposure Compensation Act. (6-1-94)
22. **P.L. 102-237.** Resources of any mixed household member who gets TAFI or SSI. (7-1-98)
23. **P.L. 103-286.** Effective 8-1-94, payments made to victims of Nazi persecution. (1-1-95)
24. **P.L. 103-436.** Payments to the Confederated Tribes of the Colville Reservation for the Grand Coulee Dam Settlement. (7-1-97)
25. **P.L. 104-204.** Payments to children with spina bifida born to Vietnam veterans. (7-1-99)
26. **Civil Liberties Act of 1988.** Restitution payments to persons of Japanese ancestry who were evacuated, relocated and interned during World War II as a result of government action. These payments are also excluded when paid to the statutory heirs of deceased internees. (6-1-94)
27. **SSI Payments Under Zebley v. Sullivan Ruling.** Retroactive lump sum SSI payments, for childhood disability, paid as a result of the Zebley v. Sullivan ruling. The payments are excluded resources for six (6) months from receipt. (6-1-94)
28. **BIA Education Grant.** Bureau of Indian Affairs (BIA) Higher Education Grant Program. (6-1-94)
29. **WIC.** Benefits from the Women, Infants, and Children (WIC) Program. (6-1-94)
30. **WIOA.** Payments from the Workforce ~~Investment~~ **Innovation and Opportunity** Act (WIOA). ~~(3-15-02)~~()
31. **Energy Assistance.** Payments from Federal, state, or local energy assistance, including insulation and weatherization payments. (6-1-94)
32. **HUD Payments.** HUD retroactive subsidy payments for tax and utilities are excluded the month received and the next month. (6-1-94)
33. **Agent Orange Settlement Fund.** Product liability payments, made by Aetna Life and Casualty from the Agent Orange Settlement Fund. Effective January 1, 1989. (6-1-94)
34. **Federal EITC.** Federal Earned Income Tax Credit (EITC) is excluded for twelve (12) months from receipt. The month of receipt is the first month of the exclusion. (7-1-14)
35. **Crime Act of 1984 as Amended by P.L. 103-322.** Payments from a crime victim compensation program. (7-1-99)
36. **Federal Tax Refunds.** Federal income tax refunds are excluded as a resource for a period of twelve (12) months from receipt. The month of receipt is the first month of the exclusion. (7-1-14)

(BREAK IN CONTINUITY OF SECTIONS)

416. -- ~~425~~6. (RESERVED)

~~426. SELF-EMPLOYMENT INCOME.~~

~~For the purposes of these rules, self-employment income is from a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. The Idaho Food Stamp Program recognizes two (2) types of self-employment businesses. (5-8-09)~~

~~01. A Self-Employed Farmer. To be considered a self-employed farmer, a person must receive, or expect to receive, an annual gross income of one thousand dollars (\$1000) or more earned from farming activities. (5-8-09)~~

~~02. All Other Self-Employment Businesses. (5-8-09)~~

(BREAK IN CONTINUITY OF SECTIONS)

429. ~~OFFSETTING FARM~~ SELF-EMPLOYMENTED LOSSES FARMER.

~~To be considered a self-employed farmer, a person must receive, or expect to receive, an annual gross income of one thousand dollars (\$1,000) or more earned from farming activities. If a farmer's cost of producing self-employment income results in a loss, the Department subtracts the loss from other countable income in the household in accordance with 7 CFR 273.11(a)(2)(ii)(A) and (B). (5-8-09)()~~

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.08 – RULES GOVERNING THE TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO (TAFI) PROGRAM

DOCKET NO. 16-0308-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code, and 45 CFR Parts 260-265.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The Department is amending these rules relating to:

1. Children receiving Supplemental Security Income (SSI) income when their families apply for and receive TAFI benefits; and
2. A child's eligibility when the child turns 18 years old.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 10-10, pages 169-174](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

1. The fiscal impact for a child who receives Supplemental Security Income (SSI), is anticipated to be cost-neutral.
2. The fiscal impact related to the change being made in regards to the eligibility of a TAFI household with a child turning 18 is estimated to be between \$2000 - \$6000 in cost savings. The state general fund portion would be \$650-\$1950 and the federal funds portion would be \$1350-\$4050.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ericka Rupp at (208) 334-5641.

Dated this 14th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 56-202, Idaho Code, and 45 CFR Parts 260-265.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 Department is amending these rules relating to:

3. Children receiving Supplemental Security Income (SSI) income when their families apply for and receive TAFI benefits; and
4. A child's eligibility when the child turns 18 years old.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

1. The fiscal impact for a child who receives Supplemental Security Income (SSI), is anticipated to be cost-neutral.
2. The fiscal impact related to the change being made in regards to the eligibility of a TAFI household with a child turning 18 is estimated to be between \$2000-\$6000 in cost savings. The state general fund portion would be \$650-\$1950 and the federal funds portion would be \$1350-\$4050.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, page 55](#). The content for Docket No. 16-0308-1801 was negotiated under Docket No. 16-0308-1701 in July of 2017.

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 Ericka Rupp at (208) 334-5641.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-1801

010. DEFINITIONS.

- 01. Agency Error.** A benefit error caused by the Department's action or failure to act. (7-1-12)
- 02. Applicant.** An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)
- 03. Assistance.** Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (3-30-01)
- 04. Caretaker Relative.** An adult who is a specified relative, other than parents, who has an eligible related child residing with them and who is responsible for the child's care. Only one (1) child in the family must be related to one (1) of the following specified relatives: brother, sister, aunt/great aunt, uncle/great uncle, grandparent/great grandparent, nephew, niece, cousin, any one (1) of these relationships by half-blood, a step-sibling, or a spouse of a relative by marriage, even if the marriage has ended. (3-29-17)
- 05. Claim Determination.** The action taken by the Department establishing the household's liability for repayment when a TAFI overpayment occurs. (7-1-12)
- 06. Department.** The Idaho Department of Health and Welfare. (7-1-98)
- 07. Dependent Child.** A child under the age of eighteen (18), ~~or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training.~~ (3-30-01)()
- 08. Earned Income.** Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)
- 09. Family.** A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (3-30-01)
- 10. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)
- 11. Household.** A unit of eligible individuals that includes parents, or may include caretaker relatives who have an eligible child residing with them. (3-29-17)
- 12. Inadvertent Household Error (IHE).** A benefit error caused unintentionally by the household. (7-1-12)
- 13. Noncustodial Parent.** A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (3-30-01)

- 14. Parent.** The mother/step-mother or father/step-father of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. (3-29-17)
- 15. Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)
- 16. Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)
- 17. Temporary Assistance for Families in Idaho (TAFI).** Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (3-30-01)
- 18. Temporary Assistance for Needy Families (TANF).** The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (3-30-01)
- 19. Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

125. MANDATORY TAFI HOUSEHOLD MEMBERS.

Individuals who must be included in the family are listed in Subsections 125.01 through 125.04 of this rule. (7-1-12)

- 01. Children.** Children under the age of eighteen (18) ~~or, under the age of nineteen (19) if they are attending a secondary school full time.~~ Children must reside with a parent or caretaker relative who exercises care and control of them. A dependent child's brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. Children receiving Supplemental Security Income (SSI) are excluded from the household ~~(3-29-17)()~~
- 02. Parents.** Parents, as defined in Section 010 of these rules, who have an eligible child residing with them. (3-29-17)
- 03. Pregnant Woman.** A pregnant woman with no other children who is in at least the third calendar month before the baby is due and is unable to work due to medical reasons. (4-5-00)
- 04. Spouses.** Anyone related by marriage to another mandatory household member. (7-1-12)

126. BUDGETING FOR CARETAKER RELATIVES.

Individuals who may be eligible are listed in Subsections 126.01 and 126.03 of this rule. (3-29-17)

- 01. Relatives.** Adult specified relatives other than parents who have an eligible related child residing with them and who are responsible for the child's care. Only one (1) child in the family must be related to one (1) of the specified caretaker relatives defined in Section 010 of these rules. (3-29-17)
- 02. Caretaker Relative Applying Only for Relative Child.** When a caretaker relative applies only for a relative child, only the child's income is counted. (3-29-17)
- 03. Multiple Children.** When multiple children are included in the family unit and any child receives ~~Social~~ Supplemental Security Income, that income is not counted in the determination of the grant amount. ~~(5-8-09)()~~

(BREAK IN CONTINUITY OF SECTIONS)

142. SCHOOL ATTENDANCE RESPONSIBILITY.

School age children included in the family must attend school until they reach age eighteen (18) ~~or they graduate from a secondary school or the equivalent level of vocational or technical training, Job Corps, alternative or home school.~~ A fifty dollar (\$50) penalty per month, per child, will be subtracted from the grant if a dependent child does not attend school. This penalty does not apply if the child is participating in work activities outlined in the PRC.

(7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

215. EXCLUDED INCOME.

The types of income listed in Subsections 215.01 through 215.~~38~~40 of this rule, are excluded.

(4-7-11)()

- 01. Supportive Services.** Supportive services payments. (7-1-98)
- 02. Work Reimbursements.** Work-related reimbursements. (7-1-98)
- 03. Child's Earned Income.** Earned income of a dependent child, who is attending school. (7-1-98)
- 04. Child Support.** Child support payments assigned to the State and non-recurring child support payments received in excess of that amount. (7-1-98)
- 05. Child's Supplemental Security Income (SSI).** Income received for a child from Supplemental Security Income (SSI). ()
- ~~056.~~ **056. Loans.** Loans with a signed, written repayment agreement. (7-1-98)
- ~~067.~~ **067. Third Party Payments.** Payments made by a person directly to a third party on behalf of the family. (7-1-98)
- ~~078.~~ **078. Money Gifts.** Money gifts, up to one hundred dollars (\$100), per person per event, for celebrations typically recognized with an exchange of gifts. (7-1-98)
- ~~089.~~ **089. TAFI.** Retroactive TAFI grant corrections. (7-1-98)
- ~~109.~~ **109. Social Security Overpayment.** The amount withheld for a Social Security overpayment. Money withheld voluntarily or involuntarily to repay an overpayment from any other source is counted as income. (7-1-99)
- ~~101.~~ **101. Interest Income.** Interest posted to a bank account. (7-1-98)
- ~~142.~~ **142. Tax Refunds.** State and federal income tax refunds. (7-1-98)
- ~~123.~~ **123. EITC Payments.** EITC payments. (7-1-98)
- ~~134.~~ **134. Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
- ~~145.~~ **145. Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
- ~~156.~~ **156. Foster Care.** Foster care payments. (7-1-98)
- ~~167.~~ **167. Adoption Assistance.** Adoption assistance payments. (7-1-98)
- ~~178.~~ **178. Food Programs.** Commodities and food stamps. (7-1-98)

- ~~189~~. **Child Nutrition.** Child nutrition benefits. (7-1-98)
- ~~1920~~. **Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
1981. ~~201~~. **Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
9101. ~~242~~. **Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
- ~~223~~. **Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
- ~~234~~. **Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
- ~~245~~. **Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
- ~~256~~. **Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
- ~~267~~. **Educational Income.** Educational income includes deferred repayment education loans, grants, scholarships, fellowships, and veterans' educational benefits. The school attended must be a recognized institution of post secondary education, a school for the handicapped, a vocational education program, or a program providing completion of a secondary school diploma, or equivalent. (7-1-12)
- ~~278~~. **Work Study Income of Student.** College work study income. (7-1-98)
- ~~289~~. **VA Educational Assistance.** VA Educational Assistance. (7-1-98)
- ~~2930~~. **Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
- ~~301~~. **Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
- ~~342~~. **Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
- ~~323~~. **Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
- ~~334~~. **Agent Orange.** Agent Orange settlement payments. (7-1-98)
- ~~345~~. **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)
- ~~356~~. **Japanese-American Restitution Payments.** Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)
- ~~367~~. **Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)
- ~~378~~. **Subsidized Employment.** Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a

memorandum of agreement with no guarantee of permanent employment for the participant. (5-8-09)

389. Temporary Census Income. All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten (10) year U.S. Census. (4-7-11)

3940. Income Excluded By Federal Law. Income excluded by federal law is not counted in determining income available to the participant. (7-1-12)

(BREAK IN CONTINUITY OF SECTIONS)

240. INDIVIDUALS EXCLUDED FROM FAMILY SIZE.

Individuals listed in Subsections 240.01 through 240.056 are excluded from the family size in determining eligibility and grant amount. Income and resources of these ineligible family members are counted unless otherwise excluded in Section 215 of these rules. (7-1-99)()

01. Ineligible Non-Citizens. Individuals who are non-citizens and are not listed in Section 131. (7-1-98)

02. Drug Related Conviction. Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use or distribution of a controlled substance, when they do not comply with the terms of a withheld judgment, probation or parole. The felony must have occurred after August 22, 1996. (3-30-01)

03. Fleeing Felons. Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony. (7-1-98)

04. Felons Violating a Condition of Probation or Parole. Felons who are violating a condition of probation or parole imposed for a federal or state felony. (7-1-98)

05. Fraudulent Misrepresentation of Residency. Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid or SSI from two (2) or more states at the same time are ineligible for ten (10) years from the date of conviction. (7-1-99)

06. Children Receiving Supplemental Security Income (SSI). A child who is receiving Supplemental Security Income (SSI). ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2019. The pending rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section 56-202(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule:

These rule changes allow eligible Critical Access Hospitals to designate additional acute care beds as swing beds to provide necessary care for individuals, without having to place them in facilities outside of their community and away from their support system. These rules would only apply to those Critical Access Hospitals, who do not have a skilled nursing facility within 35 miles of their facility, and have been approved by Medicare to offer swing-beds.

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 175 through 184](#).

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule confers a benefit as it would allow participants to stay closer to home, and remain in their communities.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact in SFY2020 of allowing Critical Access Hospitals who meet the special requirements to request additional swing-bed days from the Department would be a savings of \$87 per person, per day. The savings to the state general fund would be \$25 per person, per day, and the Federal savings would be \$62 per person, per day. This rule change would only allow those Critical Access Hospitals who do not have nursing facilities in their communities to provide additional hospital swing beds that provide the level of care that individuals need to receive care in their local communities.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule or temporary rule, contact William Deseron at (208) 364-1967.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 56-202(b), Idaho Code.

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

PUBLIC HEARING

Friday, October 26, 2018 - 9:00 a.m. (MDT)

**Department of Health & Welfare
Medicaid Central Office
3232 Elder Street
Conference Room D-East
Boise, ID 83705**

TELECONFERENCE CALL-IN

**Toll Free: 1-877-820-7831
Participant Code: 701700**

The hearing site 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:

Some rural communities in Idaho do not have local skilled nursing facilities. When individuals from those communities need skilled nursing services, they are placed in skilled nursing facilities that are up to 50 miles away from where they and their families live, limiting access to support networks that significantly contribute to their recovery and quality of life. These rule changes will allow eligible Critical Access Hospitals to designate additional acute care beds as swing beds to provide necessary care for individuals, without having to place them in facilities outside of their community and away from their support system. These rules would only apply to those Critical Access Hospitals, who do not have a skilled nursing facility within 35 miles of their facility, and have been approved by Medicare to offer swing-beds.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact in SFY2020 of allowing Critical Access Hospitals who meet the special requirements to request additional swing-bed days from the Department would be a savings of \$87 per person, per day. The savings to the state general fund would be \$25 per person, per day, and the Federal savings would be \$62 per person, per day. This rule change would only allow those Critical Access Hospitals who do not have nursing facilities in their communities to provide additional hospital swing beds that provide the level of care that individuals need to receive care in their local communities.

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 June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 55 and 56](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact William Deseron at (208) 287-1179.

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 26, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1801

405. INPATIENT HOSPITAL SERVICES: PROVIDER REIMBURSEMENT.

Under the Medicaid provisions of the Social Security Act, in reimbursing hospitals, the Department will pay the lesser of customary hospital charges or the reasonable cost of inpatient services in accordance with the procedures detailed under this Section of rule. The upper limits observed by the Department in reimbursing each individual hospital must not exceed the payment that would be determined as a reasonable cost under the policies, definitions and procedures observed under Medicare (Title XVIII) principles of cost reimbursement. (3-30-07)

01. Exemption of New Hospitals. A hospital that has operated as the type of facility for which it is certified (or the equivalent thereof) under present and previous ownership for less than three (3) full years will be paid in accordance with the Title XVIII principles of reasonable cost reimbursement, including those provisions applicable to new providers for the carryover and recovery of unreimbursed costs, in accordance with 42 CFR Section 413.64. (3-30-07)

02. Medicaid Inpatient Operating Cost Limits. The following describe the determination of inpatient operating cost limits. (3-30-07)

a. Medicaid Cost Limits for Dates of Service Prior to a Current Year. The reimbursable reasonable costs for services rendered prior to the beginning of the principal year, but included as prior period claims in a subsequent period's cost report, will be subject to the same operating cost limits as the claims under settlement. (3-30-07)

b. Application of the Medicaid Cost Limit. In the determination of a hospital's reasonable costs for inpatient services rendered after the effective date of a principal year, a hospital inflation index, computed for each hospital's fiscal year end, will be applied to the operating costs, excluding capital costs and other allowable costs as defined for the principal year and adjusted on a per diem basis for each subsequent year under the hospital inflation index. (7-1-18)

i. Each inpatient routine service cost center, as reported in the finalized principal year end Medicare cost report, will be segregated in the Medicaid cost limit calculation and assigned a share of total Medicaid inpatient ancillary costs. The prorated ancillary costs will be determined by the ratio of each Medicaid routine cost center's reported costs to total Medicaid inpatient routine service costs in the principal year. (3-30-07)

ii. Each routine cost center's total Medicaid routine service costs plus the assigned share of Medicaid inpatient ancillary costs of the principal year will be divided by the related Medicaid patient days to identify the total

costs per diem in the principal year. (3-30-07)

(1) The related inpatient routine service cost center's per diem capital and graduate medical education costs plus the prorated share of inpatient ancillary capital costs will be subtracted from the per diem amount identified in Subsection 405.02.b.ii. of this rule to identify each inpatient routine service cost center per diem cost limit in the principal year. (3-30-07)

(2) If a provider did not have any Medicaid inpatient utilization or render any Medicaid inpatient services in an individual inpatient routine service cost center in the fiscal year serving as the principal year, the principal year for only those routine cost centers without utilization in the provider's principal year will be appropriately calculated using the information available in the next subsequent year in which Medicaid utilization occurred. (3-30-07)

iii. Each routine cost center's cost per diem for the principal year will be multiplied by the hospital inflation index for each subsequent fiscal year. (7-1-18)

iv. The sum of the per diem cost limits for the Medicaid inpatient routine service cost centers of a hospital during the principal year, as adjusted by the hospital inflation index, will be the Medicaid cost limit for operating costs in the current year. (7-1-18)

(1) At the date of final settlement, reimbursement of the Medicaid current year inpatient routine cost centers plus the assigned ancillary costs will be limited to the total per diem operating costs as adjusted for each subsequent fiscal year after the principal year through the current year by the hospital inflation cost index. (7-1-18)

(2) Providers will be notified of the estimated inflation index periodically or hospital inflation index (CMS Market Basket Index) prior to final settlement only upon written request. (7-1-18)

03. Adjustments to the Medicaid Cost Limit. A hospital's request for review by the Department concerning an adjustment to or exemption from the cost limits imposed under the provisions set forth in Section 405 of this chapter of rules, must be granted under the following circumstances: (3-30-07)

a. Adjustments. Because of Extraordinary Circumstances. Where a provider's costs exceed the Medicaid limit due to extraordinary circumstances beyond the control of the provider, the provider can request an adjustment to the cost limit to the extent the provider proves such higher costs result from the extraordinary circumstances including, but not limited to, increased costs attributable to strikes, fires, earthquake, flood, or similar, unusual occurrences with substantial cost effects. (3-30-07)

b. Reimbursement to Public Hospitals. A public hospital that provides services free or at a nominal charge, which is less than, or equal to fifty percent (50%) of its total allowable costs, will be reimbursed at the same rate that would be used if the hospital's charges were equal to, or greater than, its costs. (7-1-18)

c. Adjustment to Cost Limits. A hospital is entitled to a reasonable increase in its Medicaid cost limits if the hospital shows that its per diem costs of providing services have increased due to increases in case-mix, the adoption of new or changed services, the discontinuation of services or decrease in average length of stay for Medicaid inpatients since the principal year. Any hospital making such showing is entitled to an increase commensurate with the increase in per diem costs. (7-1-18)

i. The Medicaid operating cost limit may be adjusted by multiplying cost limit by the ratio of the current year's case-mix index divided by the principal year's case-mix index. (7-1-18)

ii. The contested case procedure set forth in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," is available to larger hospitals seeking such adjustments to their Medicaid cost limits. (7-1-18)

d. Adjustment to the Proration of Ancillary Costs in the principal year. Where the provider asserts that the proration of ancillary costs does not adequately reflect the total Medicaid cost per diem calculated for the inpatient routine service cost centers in the principal year, the provider may submit a detailed analysis of ancillary

services provided to each participant for each type of patient day during each participant's stay during the principal year. The provider will be granted this adjustment only once upon appeal for the first cost reporting year that the limits are in effect. (3-30-07)

04. Payment Procedures. The following procedures are applicable to in-patient hospitals: (3-30-07)

a. The participant's admission and length of stay is subject to prior authorization, concurrent review, continued stay review, and retrospective review by a Quality Improvement Organization (QIO) designated by the Department. QIO review will be governed by provisions of the QIO Idaho Medicaid Provider Manual as amended. If a review identifies that an admission or continued stay is not medically necessary, then no Medicaid payment will be made. Failure to obtain a timely QIO review as required by Section 402 of this chapter of rules, and as outlined in the QIO Idaho Medicaid Provider Manual as amended, will result in the QIO conducting a late review. After a QIO review has determined that the hospital stay was medically necessary, Medicaid will assess a late review penalty to the hospital as outlined in Section 405 of this rule. (7-1-18)

i. All admissions are subject to QIO review to determine if continued stay in inpatient status is medically necessary. A QIO continued stay review is required when the participant's length of stay exceeds the number of days certified by the QIO. If no initial length of stay certification was issued by the QIO, a QIO continued stay review is required when the admission exceeds a number of days as specified by the Department. (3-30-07)

ii. Reimbursement for services originally identified as not medically necessary by the QIO will be made if such decision is reversed by the appeals process required in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-07)

iii. Absent the Medicaid participant's informed decision to incur services deemed unnecessary by the QIO, or not authorized by the QIO due to the negligence of the provider, no payment for denied services may be obtained from the participant. (3-30-07)

b. In reimbursing licensed hospitals, the Department will pay the lesser of customary hospital charges or the reasonable cost of semi-private rates for in-patient hospital care as set forth in this rule, unless an exception applies as stated in Section 402 of these rules. The upper limits for payment must not exceed the payment which would be determined as reasonable cost using the Title XVIII standards and principles. (3-30-07)

05. Hospital Penalty Schedule. (3-30-07)

a. A request for a preadmission and/or continued stay QIO review that is one (1) day late will result in a penalty of two hundred and sixty dollars (\$260), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

b. A request for a preadmission and/or continued stay QIO review that is two (2) days late will result in a penalty of five hundred and twenty dollars (\$520), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

c. A request for a preadmission and/or continued stay QIO review that is three (3) days late will result in a penalty of seven hundred and eighty dollars (\$780), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

d. A request for a preadmission and/or continued stay QIO review that is four (4) days late will result in a penalty of one thousand and forty dollars (\$1,040), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

e. A request for a preadmission and/or continued stay QIO review that is five (5) days late or greater will result in a penalty of one thousand three hundred dollars (\$1,300), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

06. AND Reimbursement Rate. Reimbursement for an AND will be made at the weighted average Medicaid payment rate for all Idaho nursing facilities for routine services, as defined per 42 CFR 447.280(a)(1),

furnished during the previous calendar year. ICF/ID rates are excluded from this calculation. (3-30-07)

a. The AND reimbursement rate will be calculated by the Department by March 15 of each calendar year and made effective retroactively for dates of service on or after January 1 of the respective calendar year. (3-30-07)

b. Hospitals with an attached nursing facility will be reimbursed the lesser of their Medicaid per diem routine rate or the established average rate for an AND; and (3-30-07)

c. The Department will pay the lesser of the established AND rate or a facility's customary hospital charge to private pay patients for an AND. (3-30-07)

07. Reimbursement for Services. Routine services as addressed in Subsection 405.08 of this rule include all medical care, supplies, and services which are included in the calculation of nursing facility property and non-property costs as described in these rules. Reimbursement of ancillary services will be determined in the same manner as hospital outpatient reasonable costs in accordance with Medicare reasonable cost principles, except that reimbursement for prescription drugs will be in accord with Section 665 of these rules. (3-30-07)

08. Hospital Swing-Bed Reimbursement. The Department will pay for nursing facility care in certain rural hospitals. Following approval by the Department, such hospitals may provide service to participants in licensed hospital ~~("swing-beds")~~ *beds* who require nursing facility level of care. ~~(3-30-07)~~ ()

a. Facility Requirements. The Department will approve hospitals for nursing facility care provided to eligible participants under the following conditions: (3-30-07)

i. The Department's Licensure and Certification Section finds the hospital in conformance with the requirements of 42 CFR 482.58 "Special Requirements" for hospital providers of long-term care services ("swing-beds"), or 42 CFR 485.645 – Special requirements for CAH providers of long-term services ("swing-beds") as applicable; and ~~(3-30-07)~~ ()

ii. The hospital is approved by the Medicare program for the provision of "swing-bed" services; and (3-30-07)

iii. The facility does not have a twenty-four (24) hour nursing waiver granted under 42 CFR 488.54(c); and (3-30-07)

iv. The hospital must not have had a swing-bed approval terminated within the two (2) years previous to application for swing-bed participation; and (3-30-07)

v. The hospital must be licensed for less than one hundred (100) beds as defined by 42 CFR 482.58(a)(1) for swing-bed purposes; and (3-30-07)

vi. Nursing facility services in swing-beds must be rendered in beds used interchangeably to furnish hospital or nursing facility-type services. (3-30-07)

b. Participant Requirements. The Department will reimburse hospitals for participants under the following conditions: (3-30-07)

i. The participant is determined to be entitled to such services in accordance with IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled"; and (3-30-07)

ii. The participant is authorized for payment in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 222.02. (3-30-07)

c. Reimbursement for "Swing-Bed" Patient Days. The Department will reimburse swing-bed hospitals on a per diem basis utilizing a rate established as follows: (3-30-07)

i. Payment rates for routine nursing facility services will be at the weighted average Medicaid rate per patient day paid to hospital-based nursing facility/ICF facilities for routine services furnished during the previous calendar year. ICF/ID facilities' rates are excluded from the calculations. (3-30-07)

ii. The rate will be calculated by the Department by March 15 of each calendar year. The rate will be based on the previous calendar year and effective retroactively for dates of service on or after January 1 of the respective year. (3-30-07)

iii. The weighted average rate for nursing facility swing-bed days will be calculated by dividing total payments for routine services, including patient contribution amounts but excluding miscellaneous financial transactions relating to prior years, by total patient days for each respective level of care occurring in the previous calendar year. (3-30-07)

iv. Routine services include all medical care, supplies, and services which are included in the calculation of nursing facility property and nonproperty costs as described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 225.01. (3-30-07)

v. The Department will pay the lesser of the established rate, the facility's charge, or the facility's charge to private pay patients for "swing-bed" services. (3-30-07)

vi. Reimbursement of ancillary services not included in the nursing facility rates furnished for extended care services will be billed and determined in the same manner as hospital outpatient reasonable costs in accordance with Medicare reasonable cost principles, except that reimbursement for prescription drugs will be in accord with Section 665 of these rules. (3-30-07)

vii. The number of swing-bed days that may be reimbursed to a provider in a twelve (12) month period will be limited to the greater of one thousand ninety-five (1,095) days which may be prorated over a shorter fiscal period or, fifteen percent (15%) of the product of the average number of available licensed beds in the hospital in the period and the number of days in the fiscal period. The Department may authorize additional critical access hospital swing-bed days for participants residing in a community without a nursing facility within thirty-five (35) miles contingent on a review of medical necessity, cost-effectiveness, residency, and quality of care. ~~(3-30-07)~~ ()

d. Computation of "Swing-Bed" Patient Contribution. The computation of the patient's contribution of swing-bed payment will be in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 224. (3-30-07)

09. Adjustment for Disproportionate Share Hospitals (DSH). All Idaho hospitals serving a disproportionate share of low income patients must qualify either as a Mandatory DSH or as Deemed DSH to receive a DSH payment. (3-29-10)

a. DSH Survey Requirements. The Department will send each hospital a DSH survey on or before January 31 of each calendar year. The DSH survey must be returned to the Department on or before May 31 of the same calendar year. A hospital will not receive a DSH payment if the survey is not returned by the deadline, unless good cause is determined by the Department. No later than July 15 of each calendar year, the Department must notify each hospital of their calculated DSH payment and notify each hospital of its preliminary calculated distribution amount. A hospital may file an amended survey to complete, correct, or revise the original DSH survey by submitting the amended survey and supporting documentation to the Department no later than thirty (30) days after the notice of the preliminary DSH calculation is mailed to the hospital. The state's annual DSH allotment payment will be made by September 30 of the same calendar year based on the final DSH surveys and Department data. (3-30-07)

b. Mandatory Eligibility. Mandatory Eligibility for DSH status will be provided for hospitals which: (3-30-07)

i. Meet or exceed the disproportionate share threshold as defined in Subsection 400.13 of these rules. (3-30-07)

ii. Have at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide

- obstetric services. (3-29-10)
- (1) Subsection 405.09.b.ii. of this rule does not apply to a hospital in which the inpatients are predominantly individuals under eighteen (18) years of age; or (3-30-07)
- (2) Does not offer nonemergency inpatient obstetric services as of December 21, 1987. (3-30-07)
- iii. The MUR will not be less than one percent (1%). (3-30-07)
- iv. If an Idaho hospital exceeds both disproportionate share thresholds, as described in Subsection 400.13 of these rules, and the criteria of Subsections 405.09.b.ii. and 405.09.b.iii. of this rule are met, the payment adjustment will be the greater of the amounts calculated using the methods identified in Subsections 405.09.b.vi. through 405.09.b.x. of this rule. (3-29-10)
- v. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one (1) standard deviation and less than one and one-half (1 1/2) standard deviations above the mean of all Idaho hospitals will receive a DSH payment equal to two percent (2%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- vi. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one and one-half (1 1/2) standard deviations and less than two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- vii. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates exceeding two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- viii. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to or exceeding twenty-five percent (25%) will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- ix. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to, or exceeding, thirty percent (30%) will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- c.** Deemed Disproportionate Share Hospital (DSH). All hospitals in Idaho which have inpatient utilization rates of at least one percent (1%) only in Idaho inpatient days, and meet the requirements unrelated to patient day utilization specified in Subsection 405.09.b. of this rule, will be designated a Deemed Disproportionate Share Hospital. The disproportionate share payment to a Deemed DSH hospital will be the greater of: (3-29-10)
- i. Five dollars (\$5) per Idaho Medicaid inpatient day included in the hospital's MUR computation; or (3-30-07)
- ii. An amount per Medicaid inpatient day used in the hospital's MUR computation that equals the DSH allotment amount, less the Mandatory DSH payment amount, divided by the number of Medicaid inpatient days used in the MUR computation for all Idaho DSH hospitals. (3-30-07)
- d.** Insufficient DSH Allotment Amounts. When the DSH allotment amount is insufficient to make the aggregate amount of DSH payments to each DSH hospital, payments to each hospital will be reduced by the percentage by which the DSH allotment amount was exceeded. (3-30-07)
- e.** DSH Payments Will Not Exceed Costs. A DSH payment will not exceed the costs incurred during the year of furnishing services to individuals who are either eligible for medical assistance under the State Plan or were uninsured for health care services provided during the year. (3-30-07)
- i. Payments made to a hospital for services provided to indigent patients by a state or a unit of local

government within a state will not be considered a source of third party payment. (3-30-07)

ii. Claims of uninsured costs which increase the maximum amount which a hospital may receive as a DSH payment must be documented. (3-30-07)

f. DSH Will be Calculated on an Annual Basis. A change in a provider's allowable costs as a result of a reopening or appeal will not result in the recomputation of the provider's annual DSH payment. (3-30-07)

g. To the extent that audit findings demonstrate that DSH payments exceed the documented hospital specific cost limits, the Department will collect overpayments and redistribute DSH payments. (4-7-11)

i. If at any time during an audit the Department discovers evidence suggesting fraud or abuse by a provider, that evidence, in addition to the Department's final audit report regarding that provider, will be referred to the Medicaid Fraud Unit of the Idaho Attorney General's Office. (4-7-11)

ii. The Department will submit an independent certified audit to CMS for each completed Medicaid State plan rate year, consistent with 42 CFR Part 455, Subpart D, "Independent Certified Audit of State Disproportionate Share Hospital Payment Adjustments." (4-7-11)

iii. Beginning with FFY 2011, if based on the audit of the DSH allotment distribution, the Department determines that there was an overpayment to a provider, the Department will immediately: (4-7-11)

(1) Recover the overpayment from the provider; and (4-7-11)

(2) Redistribute the amount in overpayment to providers that had not exceeded the hospital-specific upper payment limit during the period in which the DSH payments were determined. The payments will be subject to hospital-specific upper payment limits. (4-7-11)

iv. Disproportionate share payments must not exceed the DSH state allotment, except as otherwise required by the Social Security Act. In no event is the Department obligated to use State Medicaid funds to pay more than the State Medicaid percentage of DSH payments due a provider. (4-7-11)

10. Out-of-State Hospitals. (3-30-07)

a. Cost Settlements for Certain Out-of-State Hospitals. Hospitals not located in the state of Idaho will have a cost settlement computed with the state of Idaho if the following conditions are met: (3-30-07)

i. Total inpatient and outpatient covered charges are more than fifty thousand dollars (\$50,000) in the fiscal year; or (3-30-07)

ii. When less than fifty thousand dollars (\$50,000) of covered charges are billed to the state by the provider, and a probable significant underpayment or overpayment is identifiable, and the amount makes it administratively economical and efficient for cost settlement to be requested by either the provider or the state, a cost settlement will be made between the hospital and the Department. (3-30-07)

b. Payment for Hospitals Without Cost Settlement. Those out-of-state hospitals not cost settling with the state will have annually adjusted rates of payment no greater than seventy-five percent (75%) for inpatient covered charges and no greater than eighty percent (80%) of outpatient covered charges or, the Department's established fee schedule for certain outpatient services. These rates represent average inpatient and outpatient reimbursement rates paid to Idaho hospitals. (3-30-07)

11. Audit Function. Under a common audit agreement, the Medicare Intermediary may perform any audit required for both Title XVIII and Medicaid purposes. The Department may elect to perform an audit even though the Medicare Intermediary does not choose to audit the facility. (3-30-07)

12. Adequacy of Cost Information. Cost information as developed by the provider must be current, accurate, and in sufficient detail and in such form as needed to support payments made for services rendered to

participants. This includes all ledgers, books, reports, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.), which pertain to the determination of reasonable costs, leaving an audit trail capable of being audited. Financial and statistical records will be maintained in a consistent manner from one (1) settlement period to another. (3-30-07)

13. Availability of Records of Hospital Providers. A participating hospital provider of services must make available to the Department in the state in which the facility is licensed, the provider's fiscal and other necessary records for the purpose of determining its ongoing record keeping capability and to ascertain information pertinent to the determination of the proper amount of program payments due the provider. (3-30-07)

14. Interim Cost Settlements. The Department may initiate or a hospital may request an interim cost settlement based on the Medicare cost report as submitted to the Medicare Intermediary. (3-30-07)

a. Cost Report Data. Interim settlement cost report data will be adjusted to reflect Medicaid payments and statistical summary reports sent to providers before the filing deadline. (3-30-07)

b. Hard Copy of Cost Report. Hospitals which request to undergo interim cost settlement with Idaho Medicaid must submit a hard copy of the Medicare cost report to the Department upon filing with the Intermediary. (3-30-07)

c. Limit or Recovery of Payment. The Department may limit a recovery or payment of an interim settlement amount up to twenty-five percent (25%) of the total settlement amount when the cost report information is in dispute. (3-30-07)

15. Notice of Program Reimbursement. Following receipt of the finalized Medicare cost report and the timely receipt of any other information requested by the Department to fairly cost settle with the provider, a certified letter with the return receipt requested will be sent to the provider which sets forth the amounts of underpayment or overpayment made to the provider. The notice of the results of the final retroactive adjustment will be sent even though the provider intends to request a hearing on the determination, or has appealed the Medicare Intermediary's determination of cost settlement. Where the determination shows that the provider is indebted to the Medicaid program because total interim and other payments exceed cost limits, the state will take the necessary action to recover overpayment, including the suspension of interim payments sixty (60) days after the provider's receipt of the notice. Such action of recovery or suspension will continue even after a request for an informal conference or hearing is filed with the state. If the hearing results in a revised determination, appropriate adjustments will be made to the settlement amount. (3-30-07)

a. Timing of Notice. The Department will make every effort to issue a notice of program reimbursement within twelve (12) months of receipt of the cost report from the Medicare Intermediary. (3-30-07)

b. Reopening of Completed Settlements. A Medicaid completed cost settlement may be reopened by the provider or the state within a three (3) year period from the date of the letter of notice of program reimbursement. The issues must have been raised, appealed and resolved through the reopening of the cost report by the Medicare Intermediary. Issues previously addressed and resolved by the Department's appeal process are not cause for reopening of the finalized cost settlement. (3-30-07)

16. Nonappealable Items. The formula for the determination of the hospital inflation index, the principles of reimbursement which define allowable cost, non-Medicaid program issues, interim rates which are in compliance with state and federal rules, and the preliminary adjustments prior to final cost settlement determinations as supported by properly completed cost reports and audits must not be accepted as appealable items. (7-1-18)

17. Interim Reimbursement Rates. The interim reimbursement rates are reasonable and adequate to meet the necessary costs which must be incurred by economically and efficiently operated providers which provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. (3-30-07)

a. Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Medicaid Inpatient Operating Cost Limits used to set

inpatient rates and the Reimbursement Floor Percentage. (3-30-07)

b. Retrospective Adjustments. Interim rates will not be adjusted retrospectively upon request for rate review by the provider. (3-30-07)

c. Basis for Adjustments. The Department may make an adjustment based on the Medicare cost report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars (\$100,000), the interim rate will be adjusted to account for half ($\frac{1}{2}$) of the difference. (3-30-07)

d. Unadjusted Rate. The Medicaid interim reimbursement rate on file is synonymous with the term unadjusted rate used by other payors. (3-30-07)

18. Audits. All financial reports are subject to audit by Departmental representatives in accordance with Section 305 of these rules. (3-30-07)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1802

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is December 5, 2018. This pending rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202, 56-264, and 56-1610, Idaho Code, and Titles XIX and XXI of the Social Security Act and Title 56, Chapter 1, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Idaho Medicaid was directed during the 2018 session of the Idaho Legislature by passage of House Bill 465 to implement comprehensive dental benefits to all Idaho Medicaid participants. Clarifying language has been added to the Pending and Temporary rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule as previously adopted while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions made to the pending rule. Only the sections that differ from the proposed rule text are printed in this Bulletin. The original text of the temporary and proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, **Vol. 18-7, pages 93-99**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is an expected increase in General Fund expenditures of \$3.8 million. Medicaid will leverage the current Federal matching rate for the Idaho Medicaid program in addition to the anticipated future offset to the general fund of \$2.5 million from a reduction in emergency dental costs and treatment costs for other medical conditions complicated by lack of access to oral health care for these Medicaid participants. The system changes needed for this project are minimal and can be incorporated into existing operations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Cindy Brock, (208) 364-1983.

Dated this 14th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 Sections 56-202, 56-264, and 56-1610, Idaho Code, and Titles XIX and XXI of the Social Security Act and Title 56, Chapter 1, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 18, 2018.

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:

Idaho Medicaid was directed during the 2018 session of the Idaho Legislature by passage of House Bill 465 to implement comprehensive dental benefits to all Idaho Medicaid participants.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: (a) it is necessary to protect the public health, safety, or welfare; and (c) it confers a benefit.

HB465 was passed during the 2018 legislative session to confer full dental benefits to adults on the Basic Medicaid benefit plan who had previously been limited to palliative and emergency care. This rule change will expand dental benefits to these participants to include the full range of dental benefits available under the Idaho Medicaid program.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is an expected increase in General Fund expenditures of \$3.8 million. Medicaid will leverage the current Federal matching rate for the Idaho Medicaid program in addition to the anticipated future offset to the general fund of \$2.5 million from a reduction in emergency dental costs and treatment costs for other medical conditions complicated by lack of access to oral health care for these Medicaid participants. The system changes needed for this project are minimal and can be incorporated into existing operations.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because per legislative direction, the effective date for these benefits is July 1, 2018. To meet this time frame, these rules are being submitted as Temporary rules in this Bulletin.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cindy Brock, (208) 364-1983.

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 Wednesday, July 25, 2018.

DATED this 5th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1802

399. COVERED SERVICES UNDER BASIC PLAN BENEFITS.

Individuals who are eligible for Medicaid Basic Plan Benefits are eligible for the following benefits, subject to the coverage limitations contained in these rules. Those individuals eligible for services under IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” are also eligible for the services covered under this chapter of rules, unless specifically exempted. (5-8-09)

01. Hospital Services. The range of hospital services covered is described in Sections 400 through 449 of these rules. (5-8-09)

a. Inpatient Hospital Services are described in Sections 400 through 406. (3-30-07)

b. Outpatient Hospital Services are described in Sections 410 through 416. (3-30-07)

c. Reconstructive Surgery services are described in Sections 420 through 426. (3-30-07)

d. Surgical procedures for weight loss are described in Sections 430 through 436. (3-30-07)

e. Investigational procedures or treatments are described in Sections 440 through 446. (3-30-07)

02. Ambulatory Surgical Centers. Ambulatory Surgical Center services are described in Sections 450 through 499 of these rules. (5-8-09)

03. Physician Services and Abortion Procedures. Physician services and abortion procedures are described in Sections 500 through 519 of these rules. (5-8-09)

a. Physician services are described in Sections 500 through 506. (3-30-07)

b. Abortion procedures are described in Sections 510 through 516. (3-30-07)

04. Other Practitioner Services. Other practitioner services are described in Sections 520 through 559 of these rules. (5-8-09)

a. Non-physician practitioner services are described in Sections 520 through 526. (7-1-17)

b. Chiropractic services are described in Sections 530 through 536. (3-30-07)

- c. Podiatrist services are described in Sections 540 through 545. (3-29-12)
- d. Licensed midwife (LM) services are described in Sections 546 through 552. (3-29-12)
- e. Optometrist services are described in Sections 553 through 556. (3-29-12)
- 05. Primary Care Case Management.** Primary care case management services are described in Sections 560 through 579 of these rules. (5-8-09)
- a. Healthy Connections services are described in Sections 560 through 566. (4-4-13)
- 06. Prevention Services.** The range of prevention services covered is described in Sections 580 through 649 of these rules. (4-4-13)
- a. Child Wellness Services are described in Sections 580 through 586. (3-30-07)
- b. Adult Physical Services are described in Sections 590 through 596. (3-30-07)
- c. Screening mammography services are described in Sections 600 through 606. (3-30-07)
- d. Diagnostic Screening Clinic services are described in Sections 610 through 614. (4-4-13)
- e. Additional Assessment and Evaluation services are described in Section 615. (4-4-13)
- f. Health Questionnaire Assessment is described in Section 618. (4-4-13)
- g. Preventive Health Assistance benefits are described in Sections 620 through 626. (5-8-09)
- h. Nutritional services are described in Sections 630 through 636. (3-30-07)
- i. Diabetes Education and Training services are described in Sections 640 through 646. (3-30-07)
- 07. Laboratory and Radiology Services.** Laboratory and radiology services are described in Sections 650 through 659 of these rules. (5-8-09)
- 08. Prescription Drugs.** Prescription drug services are described in Sections 660 through 679 of these rules. (5-8-09)
- 09. Family Planning.** Family planning services are described in Sections 680 through 689 of these rules. (5-8-09)
- 10. Outpatient Behavioral Health Services.** Community-based outpatient services for behavioral health treatment are described in Sections 707 through 711 of these rules. (3-20-14)
- 11. Inpatient Psychiatric Hospital Services.** Inpatient Psychiatric Hospital services are described in Sections 700 through 706. (3-20-14)
- 12. Home Health Services.** Home health services are described in Sections 720 through 729 of these rules. (5-8-09)
- 13. Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are described in Sections 730 through 739 of these rules. (5-8-09)
- 14. Audiology Services.** Audiology services are described in Sections 740 through 749 of these rules. (5-8-09)

- 15. Durable Medical Equipment and Supplies.** The range of covered durable medical equipment and supplies is described in Sections 750 through 779 of these rules. (5-8-09)
- a. Durable Medical Equipment and supplies are described in Sections 750 through 756. (3-30-07)
 - b. Oxygen and related equipment and supplies are described in Sections 760 through 766. (3-30-07)
 - c. Prosthetic and orthotic services are described in Sections 770 through 776. (3-30-07)
- 16. Vision Services.** Vision services are described in Sections 780 through 789 of these rules. (5-8-09)
- 17. Dental Services.** The dental services covered ~~under the Basic Plan~~ **by Medicaid** are covered under a selective contract as described in Section 800 through 819 of these rules. (3-29-12)()
- 18. Essential Providers.** The range of covered essential services is described in Sections 820 through 859 of these rules. (5-8-09)
- a. Rural health clinic services are described in Sections 820 through 826. (3-30-07)
 - b. Federally Qualified Health Center services are described in Sections 830 through 836. (3-30-07)
 - c. Indian Health Services Clinic services are described in Sections 840 through 846. (3-30-07)
 - d. School-Based services are described in Sections 850 through 857. (3-20-14)
- 19. Transportation.** The range of covered transportation services is described in Sections 860 through 879 of these rules. (5-8-09)
- a. Emergency transportation services are described in Sections 860 through 866. (3-30-07)
 - b. Non-emergency medical transportation services are described in Sections 870 through 876. (4-4-13)
- 20. EPSDT Services.** EPSDT services are described in Sections 880 through 889 of these rules. (5-8-09)
- 21. Specific Pregnancy-Related Services.** Specific pregnancy-related services are described in Sections 890 through 899 of these rules. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

SUB AREA: DENTAL SERVICES
(Sections 800 - 819)

800. DENTAL SERVICES: SELECTIVE CONTRACT FOR DENTAL COVERAGE.

All participants ~~who are~~ eligible for Medicaid ~~is Basic Plan~~ dental benefits are covered under a selective contract for a dental insurance program called Idaho Smiles at <http://www.healthandwelfare.idaho.gov/Medical/Medicaid/MedicalCare/DentalServices/tabid/696/Default.aspx>. (3-29-12)()

801. DENTAL SERVICES: DEFINITIONS.

For the purposes of dental services covered in Sections 800 through 807 of these rules, the following definitions apply: (3-29-12)

- 01. Adult.** A person who is past the month of his twenty-first birthday. (3-29-12)

02. **Child.** A person from birth through the month of his twenty-first birthday. (3-29-12)

03. **Idaho Smiles.** A dental insurance program provided to eligible Medicaid participants through a selective contract between the Department and a dental insurance carrier. (3-29-12)

~~04. **Medicare/Medicaid Coordinated Plan (MMCP).** Medical assistance in which Medicaid purchases services from a Medicare Advantage Organization (MAO) and provides other Medicaid-only services covered under the Medicaid Basic Plan in accordance with IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits." (3-29-12)~~

802. DENTAL SERVICES: PARTICIPANT ELIGIBILITY.

Children, ~~and adults, and pregnant women on Medicaid's Pregnant Woman (PW) Program who meet the eligibility criteria~~ **eligible** for Medicaid's ~~Basic Plan~~ are eligible for Idaho Smiles dental benefits described in Section 803 of these rules. ~~Participants who are over age twenty one (21), who are eligible for both Medicare A and Medicare B, and who have chosen to enroll in a Medicare/Medicaid Coordinated Plan (MMCP) under IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits," Section 100, receive dental benefits from the MMCP insurance carrier and not from Idaho Smiles. (3-29-12)()~~

803. DENTAL SERVICES: COVERAGE AND LIMITATIONS.

Some covered dental services may ~~require~~ **be subject to limitations**, authorization from the Idaho Smiles contractor ~~or benefit restrictions according to the terms of its contract with the Department, in addition to those specified in these rules.~~ (3-29-12)()

01. **Dental Coverage for Children.** Children are covered for dental services that include: (3-29-12)

~~a. Preventative and screenings, problem-focused and comprehensive exams, diagnostic, restorative, endodontic services (including root canals and crowns), periodontics, prosthodontic, and orthodontic treatments, dentures, crowns and oral surgery; (3-29-12)()~~

~~b. Other dental services that are determined medically necessary by the Department, as required by the Early and Periodic Screening and Diagnostic Testing (EPSDT) guidelines specified in Section 1905(r) of the Social Security Act, are also covered. (3-29-12)~~

02. **Children's Orthodontics Dental Limitations for Children.** Orthodontics are limited to children who meet ~~the Basic Plan Medicaid~~ **Medicaid** eligibility requirements, and the Idaho Medicaid Handicapping Malocclusion Index as ~~evaluated~~ **determined** by ~~the state Medicaid dental consultant and the dental insurance State's contractor's dental consultant. The Malocclusion Index is found in Appendix A of these rules. (3-29-12)()~~

03. **Dental Coverage and Limitations for Adults.** ~~Adults who are not pregnant are limited to the dental services coverage using the Current Dental Terminology (CDT) codes listed in the following table: Adults are covered for dental services that include preventative screenings, problem-focused and comprehensive exams, diagnostic, restorative, periodontics, prosthodontic, dentures, oral surgery, and endodontic services with limitations.~~

TABLE 803.03—ADULT DENTAL SERVICES CODES	
Dental Code	Description
D0140	Limited oral evaluation. Problem focused
D0220	Intraoral periapical film
D0230	Additional intraoral periapical films
D0330	Panoramic film
D7140	Extraction
D7240	Surgical removal of erupted tooth

TABLE 803.03 – ADULT DENTAL SERVICES CODES	
Dental Code	Description
D7220	Removal of impacted tooth, soft tissue
D7230	Removal of impacted tooth, partially bony
D7240	Removal of impacted tooth, completely bony
D7241	Removal of impacted tooth, with complications
D7250	Surgical removal of residual tooth roots
D7260	Oroantral fistula closure
D7261	Primary closure of sinus perforation
D7285	Biopsy of hard oral tissue
D7286	Biopsy of soft oral tissue
D7450	Excision of malignant tumor <1.25 cm
D7451	Excision of malignant tumor >1.25 cm
D7510	Incision and drainage of abscess
D7511	Incision and drainage of abscess, complicated
D9110	Minor palliative treatment of dental pain
D9220	Deep sedation/anesthesia first 30 minutes
D9221	Regional block anesthesia
D9230	Analgesia, anxiolysis, nitrous oxide
D9241	IV conscious sedation first 30 minutes
D9242	IV conscious sedation each additional 15 minutes
D9248	Non IV conscious sedation
D9420	Hospital call
D9610	Therapeutic parenteral drug single administration
D9630	Other drugs and/or medicaments by report

(3-29-12)()

~~04. **Dental Coverage for Pregnant Women.** Pregnant women on Medicaid's Basic, Enhanced, or PW plans are covered for preventative and problem-focused exams, diagnostic, restorative, endodontic, periodontic, and oral surgery benefits. Specific information about pregnant women is available online at dental services at <http://www.healthandwelfare.idaho.gov/Medical/Medicaid/MedicalCare/DentalServices/tabid/696/Default.aspx>. (3-29-12)~~

~~054. **Benefit Dental Limitations for Adults.** The dental insurance contractor may establish limitations and restrictions for benefits according to the terms of its contract with the Department, Root canals and crowns are not covered. (3-29-12)()~~

804. DENTAL SERVICES: PROCEDURAL REQUIREMENTS.

Providers must enroll in the Idaho Smiles network with the dental insurance contractor and meet both credentialing and quality assurance guidelines of the contractor. (3-29-12)

01. Administer Idaho Smiles. The contractor is responsible for administering the Idaho Smiles

program, including but not limited to dental claims processing, payments to providers, customer service, eligibility verification, and data reporting. (3-29-12)

02. Authorization. The contractor is responsible for authorization of covered dental services that require authorization prior to claim payment. (3-29-12)

03. Grievances. The contractor is responsible for tracking and reporting all grievances to the State's contract monitor. ()

034. ~~Complaints and~~ Appeals. ~~Complaints and a~~ Appeals are handled ~~through~~ by a process between ~~Idaho Smiles~~ the contractor and the Department ~~that is~~ as specified in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," and in compliance with state and federal requirements. ~~(3-29-12)~~()

(BREAK IN CONTINUITY OF SECTIONS)

806. DENTAL SERVICES: PROVIDER REIMBURSEMENT.

The Idaho Smiles administrator reimburses dental providers on a fee-for-service basis under a Department approved fee schedule. The State will collaborate with the contractor to establish rates that promote and ensure adequate access to dental services. ~~(3-29-12)~~()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1804

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

Laboratory rules in this chapter have not been updated since 2007. Laboratory tests have rapidly changed in the past 11 years, and a foundation in rule is needed for Department coverage of these services. This rulemaking establishes a minimum standard for necessary testing in genetics and drug testing and also establishes rules for family planning, genetic testing, and quality control to ensure appropriate use of state and federal funds.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 185 through 187](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 state general funds, or any other funds as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Deseron at (208) 364-1967.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 56-202(b), Idaho Code.

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

PUBLIC HEARING

Friday, October 26, 2018 - 9:00 a.m. (MDT)

**Department of Health & Welfare
Medicaid Central Office
3232 Elder Street
Conference Room D-East
Boise, ID 83705**

TELECONFERENCE CALL-IN

**Toll Free: 1-877-820-7831
Participant Code: 701700**

The hearing site 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

Laboratory rules in this chapter haven't been updated since 2007. Laboratory tests have rapidly changed in the past 11 years, and a foundation in rule is needed for Department coverage of these services. A minimum standard will be established with the following changes.

1. Ensure that Medicaid providers outside of Idaho maintain the same quality of work and documentation as providers within the state;
2. Prevent expenditure of tax payer funds for services that are inaccurate, or for genetic services that could be used for elective abortions;
3. Establish authority for prior authorizations to be required by the Department so that delivery of services is consistent with the Department's utilization management as required by CFR; and
4. Set minimum requirements for testing coverage.

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 negative 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 state general funds, or any other funds as a result of 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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 103 through 104](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact William Deseron at (208) 287-1179.

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 26, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1804

**SUB AREA: LABORATORY AND RADIOLOGY SERVICES
(Sections 650 - 659)**

650. LABORATORY AND RADIOLOGY SERVICES: DEFINITIONS.

01. Independent Laboratory. A laboratory that is not located in a physician's office, and receives specimens from a source other than another laboratory. A physician is not an independent laboratory. (3-30-07)()

02. Laboratory or Clinical Laboratory. A facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examinations of material derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, or the impairment or assessment of human health. ()

03. Proficiency Testing. Evaluation of a laboratory's ability to perform laboratory procedures within acceptable limits of accuracy through analysis of unknown specimens distributed at periodic intervals. ()

04. Quality-Control. A day-to-day analysis of reference materials to ensure reproducibility and accuracy of laboratory results, and includes an acceptable system to assure proper functioning of instruments, equipment and reagents. ()

025. Reference Laboratory. A laboratory that only accepts specimens from other laboratories and does not receive specimens directly from patients. (3-30-07)()

651. -- 6532. (RESERVED)

653. LABORATORY AND RADIOLOGY SERVICES: COVERAGE AND LIMITATIONS.

01. Medical Necessity Criteria. Services must meet the definition of Medical Necessity in Section 011 of these rules as detailed in the Idaho Medicaid Provider Handbook. ()

02. Prior Authorization of Services. The Department may require prior authorization of any laboratory or radiology service as detailed in the Idaho Medicaid Provider Handbook. ()

654. LABORATORY AND RADIOLOGY SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.
Laboratories in a physician's office or a physician's group practice association, except when physicians personally perform their own patients' laboratory tests, must be certified by the Idaho Bureau of Laboratories and be eligible for Medicare certification for participation. All other Idaho laboratories must fulfill these requirements. (3-30-07)

01. Laboratory and Radiology Requirements. Providers of laboratory and radiology services must be eligible for Medicare certification for these services. ()

02. Use of Reference Laboratories. Laboratories using reference laboratories must ensure that all requirements of Sections 650 through 659 of these rules are met by the reference laboratory. ()

655. LABORATORY AND RADIOLOGY SERVICES: PROVIDER REIMBURSEMENT.

01. Provider of Service. Payment for laboratory tests can only be made to the actual provider of that service. An exception to the preceding is made in the case of: ()

a. ~~An independent laboratory that can bill for a reference laboratory;~~ *A physician is not an independent laboratory. (3-30-07)* ()

b. A transplant facility that can bill for histocompatibility testing; and ()

c. Healthcare professionals acting within the licensure and scope of their practice to comply with IDAPA 16.02.12, "Procedures and Testing to be Performed on Newborn Infants." ()

02. Tests Performed by or Personally Supervised by a Physician. The payment level for clinical diagnostic laboratory tests performed by or personally supervised by a physician will be at a rate established by the Department that is no higher than Medicare's fee schedule. The payment level for other laboratory tests will be a rate established by the Department. (3-30-07)

03. Tests Performed by an Independent Laboratory. The payment level for clinical diagnostic laboratory tests performed by an independent laboratory will be at a rate established by the Department that is no higher than Medicare's fee schedule. The payment level for other laboratory tests will be at a rate established by the Department. (3-30-07)

04. Tests Performed by a Hospital Laboratory. The payment level for clinical diagnostic laboratory tests performed by a hospital laboratory for anyone who is not an inpatient will be at a rate established by the Department that is no higher than Medicare's fee schedule. The payment level for other laboratory tests will be at a rate established by the Department. (3-30-07)

05. Specimen Collection Fee. Collection fees for specimens drawn by venipuncture or catheterization are payable only to the physician or laboratory who draws the specimen. If done during an office visit on the same day the service is ordered, specimen collection may be reimbursed even if prior authorization is not approved. *(3-30-07)* ()

656. LABORATORY AND RADIOLOGY SERVICES: QUALITY ASSURANCE.
Laboratories, as a condition of payment, must maintain a quality-control program, including proficiency testing consistent with federal requirements, as detailed in the Idaho Medicaid Provider Handbook. The laboratory must provide the results of proficiency testing to the Department or their Quality Improvement Organization vendor upon request. ()

~~657.~~ -- 659. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1805

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code; also House Bill 128 (2017) codified as Section 56-265(5), Idaho Code, re: Value-Based Care.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The 2017 Idaho Legislature passed House Bill 128, amending Section 56-265(5), Idaho Code, that provided the Department with the authority to develop a value-based payment model approach to provide Medicaid services to participants. This rulemaking incorporates new procedural requirements needed to implement a fixed participant enrollment process to support the value-based model through the existing Healthy Connections Program.

The existing Healthy Connections enrollment process allows participants to change their primary care provider (PCP) any time they choose. These proposed rule changes implement an enrollment process, (referred to as a “fixed enrollment process”), which designates a set period of time where participants are free to change their PCP at will. Once this time period ends, participants will not be able to change their PCP at will until the next open enrollment period the following year. There are provisions that allow PCP changes outside of the open enrollment period, for cause, which have been added to meet the requirements of federal law. These changes encourage a long-term provider-patient relationship through which a medical home is established. This ensures the participant is receiving a consistent source of care, provides for better patient outcomes, and supports the value-based model of care, as directed by the legislature.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 188–190](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 or any other funds for these rule changes. The rule changes are considered to be budget neutral for providers and there are no benefit changes for participants. Programmatic changes needed to implement this rulemaking are possible within existing Medicaid program funding.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cindy Brock at (208) 364-1983.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 56-202(b), Idaho Code; also House Bill 128 (2017) codified as Section 56-265(5), Idaho Code, re: Value-Based Care.

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

PUBLIC HEARING

Tuesday, October 23, 2018 - 9:30 a.m. (MDT)

**Department of Health & Welfare
Medicaid Central Office
3232 Elder Street
Conference Room D-East and D-West
Boise, ID 83705**

TELECONFERENCE CALL-IN

**Call in number: 1-240-454-0879
Meeting access code: 805 638 537
Meeting password: 4jsvE7p8 (45783778 from phones)**

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 2017 Idaho Legislature passed House Bill 128, amending Section 56-265(5), Idaho Code, that provided the Department with the authority to develop a value-based payment model approach to provide Medicaid services to participants. This rulemaking incorporates new procedural requirements needed to implement a fixed participant enrollment process to support the value-based model through the existing Healthy Connections Program.

The existing Healthy Connections enrollment process allows participants to change their primary care provider (PCP) any time they choose. These proposed rule changes implement an enrollment process, (referred to as a “fixed enrollment process”), which designates a set period of time where participants are free to change their PCP at will. Once this time period ends, participants will not be able to change their PCP at will until the next open enrollment period the following year. There are provisions that allow PCP changes outside of the open enrollment period, for cause, which have been added to meet the requirements of federal law. These changes encourage a long-term provider-patient relationship through which a medical home is established. This ensures the participant is receiving a consistent source of care, provides for better patient outcomes, and supports the value-based model of care, as directed by the legislature.

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 negative 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 or any other funds for these rule changes. The rule changes are considered to be budget neutral for providers and there are no benefit changes for participants. Programmatic changes needed to implement this rulemaking are possible within existing Medicaid program funding.

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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 105 and 106](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cindy Brock at (208) 364-1983.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1805

562. HEALTHY CONNECTIONS: PRIMARY CARE SERVICES.

- 01. Eligible Services.** Participants enrolled with a primary care provider (PCP) are eligible to receive: (3-25-16)
- a. Basic care management and care coordination; (3-25-16)
 - b. Timely access to routine primary care; (3-25-16)
 - c. A patient-centered health care decision making process; (3-25-16)
 - d. Twenty-four (24) hour, seven (7) days per week access to an on-call medical professional; and (3-25-16)
 - e. Referral to other medically necessary services as specified in Section 210 of these rules, based on the clinical judgment of their primary care provider. (3-25-16)
- 02. Selection or Change in Primary Care Provider.** Participants may select or change their primary care provider ~~at any time by contacting Healthy Connections staff.~~ as follows: (3-25-16)()
- a. When they become eligible for Idaho Medicaid benefits, or after a break in their eligibility for Idaho Medicaid benefits: ()
 - b. For cause at any time (“for cause” reasons are listed in the Idaho Medicaid Provider Handbook). ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1806

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code; also 42 CFR 447.502, 447.512, 447.514, and 447.518.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

These rule changes are being made to implement policy (coverage) and reimbursement changes to the Medicaid Pharmacy program rules that are the result of recent changes in federal regulations and corresponding changes that have been made to the Idaho Medicaid State Plan.

Coverage changes include provisions clarifying that:

1. Drugs acquired through the federal 340B drug pricing program and dispensed by 340B contract pharmacies are not covered; and
2. Investigational drugs are not covered under Idaho's Medicaid pharmacy program.

Reimbursement changes include replacing one cost measure (Estimated Acquisition Cost, or EAC) with the Average Acquisition Cost (AAC), or Wholesale Acquisition Cost (WAC) in cases where the AAC is not available. In addition, revisions will also update information in rule regarding which drugs are covered and which drugs are excluded.

Also, this docket updates an old list of drugs for which a three-month supply may be prescribed and dispensed, and establishes appropriate controls for prescriptions of opioids.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 191 – 204](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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, or any other funds, related to this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Clay Lord at (208) 364-1979.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Phone: (208) 334-5500 / Fax: (208) 334-6558
Boise, ID 83720-0036
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 56-202(b), Idaho Code; also 42 CFR 447.502, 447.512, 447.514, and 447.518.

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

PUBLIC HEARING
Wednesday, October 17, 2018 - 9:00 a.m. (MDT)
Department of Health & Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East Boise, ID 83705
TELECONFERENCE CALL-IN
Toll Free: 1-877-820-7831 Participant Code: 701700

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:

These rule changes are being made to implement policy (coverage) and reimbursement changes to the Medicaid Pharmacy program rules that are the result of recent changes in federal regulations and corresponding changes that have been made to the Idaho Medicaid State Plan.

Coverage changes include provisions clarifying that:

1. Drugs acquired through the federal 340B drug pricing program and dispensed by 340B contract pharmacies are not covered; and
2. Investigational drugs are not covered under Idaho's Medicaid pharmacy program.

Reimbursement changes include replacing one cost measure (Estimated Acquisition Cost, or EAC) with the Average Acquisition Cost (AAC), or Wholesale Acquisition Cost (WAC) in cases where the AAC is not available. In addition, revisions will also update information in rule regarding which drugs are covered and which drugs are excluded.

Also, this docket updates an old list of drugs for which a three-month supply may be prescribed and dispensed and establishes appropriate controls for prescriptions of opioids.

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 negative 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, or any other funds, related 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 July 4, 2018, Idaho Administrative Bulletin, **Vol. 18-7, pages 107 and 108.**

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Clay Lord at (208) 364-1979.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1806

662. PRESCRIPTION DRUGS: COVERAGE AND LIMITATIONS.

01. General Drug Coverage. The Department will pay for those prescription drugs not excluded by Subsections ~~662.046 and 662.07~~ of ~~these~~**this** rules which are legally obtainable by the order of a licensed prescriber whose licensing allows for the prescribing of **prescription drugs or** legend drugs, as defined under Section 54-1705~~(37)~~, Idaho Code, and which are deemed medically necessary as defined in Section 011 of these rules.

~~(3-30-07)~~()

02. Dispensing Fee Preferred Drug List (PDL). ~~Dispensing Fee is defined as the cost of filling a prescription including direct pharmacy overhead, and is for all services pertaining to the usual practice of pharmacy, including:~~

~~(4-4-13)~~()

a. Interpretation, evaluation, compounding, and dispensing of prescription drug orders; The PDL identifies the preferred drugs and non-preferred drugs within a therapeutic class designated by the Department and reviewed by the Idaho Medicaid Pharmacy and Therapeutics Committee.

~~(3-30-07)~~()

b. Participation in drug selection; A brand name drug may be designated as a preferred drug by the Department if the net cost of the brand name drug after consideration of all rebates is less than the cost of the generic equivalent.

~~(3-30-07)~~()

c. Drug administration; The Director of the Department makes final decisions regarding the designated preferred or non-preferred status of drugs based on therapeutic recommendations from the Pharmacy and Therapeutics Committee and cost analysis from the Idaho Medicaid Pharmacy Program.

~~(3-30-07)~~()

d. Drug regimen and research reviews; Drugs in a drug class on the Medicaid PDL may require therapeutic prior authorization regardless of preferred or non-preferred designation.

~~(3-30-07)~~()

e. Proper storage of drugs;

~~(3-30-07)~~

- ~~f. Maintenance of proper records; (3-30-07)~~
- ~~g. Prescriber interaction; and (3-30-07)~~
- ~~h. Patient counseling. (3-30-07)~~
- 03. Limitations on Payment.** ~~Medicaid payment for prescription drugs will be limited as follows: (3-30-07)~~
- ~~a. Days' Supply. Medicaid will not cover any days' supply of prescription drugs that exceeds the quantity or dosage allowed by these rules. (3-30-07)~~
- ~~b. Brand Name Drugs. Medicaid will not pay for a brand name product that is part of the federal upper limit (FUL) or state maximum allowable cost (SMAC) listing when the physician has not specified the brand name drug to be medically necessary. (3-30-07)~~
- ~~c. Medication for Multiple Persons. When the medication dispensed is for more than one (1) person, Medicaid will only pay for the amount prescribed for the person or persons covered by Medicaid. (3-30-07)~~
- ~~d. No Prior Authorization. Medicaid will not pay for a covered drug or pharmacy item that requires, but has not received, prior authorization for Medicaid payment as required in Section 663 of these rules. (3-30-07)~~
- ~~e. Limitations to Discourage Waste. Medicaid may conduct drug utilization reviews and impose limitations for participants whose drug utilization exceeds the standard participant profile or disease management guidelines determined by the Department. (3-30-07)~~
- 04. Excluded Covered Drug Products.** ~~The following categories and specific products are excluded from coverage by Idaho Medicaid provides coverage to Medicaid participants for the following drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under Section 1927(d)(2) of the Social Security Act: (3-30-07)()~~
- ~~a. Non-Legend Medications. Federal legend medications that change to non-legend status, as well as their therapeutic equivalents regardless of prescription, status unless: Agents, when used to promote smoking cessation. (3-30-07)()~~
- ~~i. They are included in Subsection 662.05.b. of these rules; or (3-30-07)~~
- ~~ii. The Director determines that non-legend drug products are covered based upon appropriate criteria including the following: safety, effectiveness, clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, cost, and the recommendation of the Pharmacy And Therapeutics Committee. Therapeutically interchangeable is defined in Subsection 663.01.e. of these rules. (3-30-07)~~
- ~~b. Legend Drugs. Any legend drugs for which federal financial participation is not available. Prescription vitamins and mineral products. Covered agents include the following: (3-30-07)()~~
- ~~i. Injectable vitamin B12 (cyanocobalamin and analogues); ()~~
- ~~ii. Vitamin K and analogues; ()~~
- ~~iii. Prescription vitamin D and analogues; ()~~
- ~~iv. Prescription pediatric vitamins, minerals, and fluoride preparations; ()~~
- ~~v. Prenatal vitamins for pregnant or lactating individuals; and ()~~
- ~~vi. Prescription folic acid and oral prescription drugs containing folic acid in combination with vitamin~~

B12 or iron salts, or both, without additional ingredients. ()

~~c. Diet Supplements. Diet supplements and weight loss products, except lipase inhibitors when prior authorized as outlined in Section 663 of these rules.~~ Certain prescribed non-prescription products, including the following: (3-30-07)()

~~i. Permethrin;~~ ()

~~ii. Oral iron salts;~~ ()

~~iii. Disposable insulin syringes and needles; and~~ ()

~~iv. Insulin.~~ ()

~~d. Amphetamines and Related Products. Amphetamines and related products for cosmetic purposes or weight loss. Amphetamines and related products which are deemed to be medically necessary may be covered if prior authorized as outlined in Section 663 of these rules~~ Barbiturates. (3-30-07)()

~~e. Ovulation/Fertility Drugs. Ovulation stimulants, fertility drugs, and similar products~~ Benzodiazepines. (3-30-07)()

~~f. Impotency Aids. Impotency aids, either as medication or prosthesis.~~ (3-30-07)

~~g. Medications Utilized for Cosmetic Purposes. Medications utilized for cosmetic purposes or hair growth. Prior authorization may be granted for these medications if the Department finds other medically necessary indications.~~ (3-30-07)

~~h. Vitamins. Vitamins unless included in Subsection 662.05.a. of these rules.~~ (3-30-07)

~~i. Dual Eligibles. Drug classes covered under Medicare, Part D, for Medicaid participants who are also eligible for Medicare.~~ (3-30-07)

04. Additional Criteria for Coverage. ()

a. Medical necessity is the primary determinant of whether a therapeutic agent will be covered. The Department will cover generic drugs, and also brand drugs when medically necessary and when that necessity is adequately documented. If case-specific indications of medical necessity are present, the Department may also issue prior authorization for otherwise excluded drugs. ()

b. The Director of the Department of Health and Welfare, acting upon the recommendation of the Pharmacy and Therapeutics Committee, may determine that a non-prescription drug product is covered when the non-prescription product is found to be therapeutically interchangeable with prescription drugs in the same pharmacological class following evidence-based comparisons of efficacy, effectiveness, clinical outcomes, and safety, and the product is deemed by the Department to be a cost-effective alternative. Information regarding the Pharmacy and Therapeutics Committee and covered drug products is posted at <http://medicaidpharmacy.idaho.gov>. ()

05. Additional Covered Excluded Drug Products. ~~Additional drug products will be allowed as follows~~ Idaho Medicaid excludes from coverage the following drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under Section 1927(d)(2) of the Social Security Act: (3-30-07)()

a. ~~Therapeutic Vitamins. Therapeutic vitamins may include:~~ Agents, when used to promote fertility. (3-30-07)()

~~i. Injectable vitamin B12 (cyanocobalamin and analogues);~~ (3-30-07)

- ~~ii. Vitamin K and analogues; (3-30-07)~~
- ~~iii. Pediatric legend vitamin fluoride preparations; (3-30-07)~~
- ~~iv. Legend prenatal vitamins for pregnant or lactating women; (3-30-07)~~
- ~~v. Legend folic acid; (3-30-07)~~
- ~~vi. Oral legend drugs containing folic acid in combination with Vitamin B12 and/or iron salts, without additional ingredients; (4-4-13)~~
- ~~vii. Legend vitamin D and analogues; and (4-4-13)~~
- ~~viii. Legend tobacco cessation products. (3-20-14)~~
- b. Prescriptions for Nonlegend Products. Prescriptions for nonlegend products may include: Agents, when used for cosmetic purposes or hair growth. (3-30-07)()**
- ~~i. Insulin; (3-30-07)~~
- ~~ii. Disposable insulin syringes and needles; (3-30-07)~~
- ~~iii. Oral iron salts; (4-4-13)~~
- ~~iv. Permethrin; and (4-4-13)~~
- ~~v. Tobacco cessation products. (3-20-14)~~
- c. Agents, when used for the symptomatic relief of cough and colds. ()**
- d. Covered outpatient drugs for which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee. ()**
- e. Agents, when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration. ()**
- 06. Additional Excluded Drugs. Drugs are also not covered when any of the following circumstances apply: ()**
- a. The participant's practitioner has written an order for a prescription drug for which federal financial participation is not available. ()**
- b. The participant's practitioner has written an order for a prescription drug that is deemed to be experimental or investigational, as defined in Subsection 390.03 of these rules. Investigational drugs are not a covered service under the Idaho Medicaid pharmacy program. The Department may consider Medicaid coverage on a case-by-case basis for life-threatening medical illnesses when no other treatment options are available. When approved for payment, reimbursement will be at actual acquisition cost, plus the assigned professional dispensing fee. ()**
- 067. Limitation of Quantities. Medication refills provided before at least seventy-five percent (75%) of the estimated days' supply has been utilized are not covered, unless an increase in dosage is ordered. Days' supply is the number of days a medication is expected to last when used at the dosage prescribed for the participant. No more than a thirty-four (34) days' supply of continuously required medication is to be purchased in a calendar month as a result of a single prescription with the following exceptions: (3-30-07)**
- a. Doses of Medication. Up to one hundred (100) doses of medication may be dispensed, not to exceed**

~~a one hundred (100) day supply for:~~ Maintenance Medications. Pharmacy providers may be reimbursed for up to a three (3) month supply of select medications or classes of medications for a participant who has received the same dose of the same select medication or class of medications for two months or longer. The Director of the Department of Health and Welfare, acting upon the recommendation of the Pharmacy and Therapeutics Committee, approves the list of covered maintenance medications, which targets medications that are administered continuously rather than intermittently, are used most commonly to treat a chronic disease state, and have a low probability for dosage changes. The list of covered maintenance medications is available on the Medicaid Pharmacy website at <http://medicaidpharmacy.idaho.gov>. (3-30-07)()

- ~~i. Cardiac glycosides;~~ (3-30-07)
- ~~ii. Thyroid replacement hormones;~~ (3-30-07)
- ~~iii. Prenatal vitamins;~~ (3-30-07)
- ~~iv. Nitroglycerin products—oral or sublingual;~~ (3-30-07)
- ~~v. Fluoride and vitamin/fluoride combination products; and~~ (3-30-07)
- ~~vi. Nonlegend oral iron salts.~~ (3-30-07)

b. Oral Contraceptive Products. Oral contraceptive products may be dispensed in a quantity sufficient for one (1), two (2), or three (3) cycles. (3-30-07)

663. PRESCRIPTION DRUGS: PROCEDURAL REQUIREMENTS.

In accordance with Section 1927(d)(1)(A) of the Social Security Act, the Idaho Medicaid Pharmacy Program may subject any covered outpatient drug to prior authorization. ()

01. Items Drugs Requiring Prior Authorization. Pharmaceutical items requiring prior authorization include: No payment for drugs requiring prior authorization will be issued until the prior authorization request has been reviewed and approved by the Department. (3-30-07)()

- ~~a. Amphetamines and related CNS stimulants;~~ (3-30-07)
- ~~b. Growth hormones;~~ (3-30-07)
- ~~c. Retinoids;~~ (3-30-07)
- ~~d. Brand name drugs when an acceptable generic form exists;~~ (3-30-07)
- ~~e. Medication otherwise covered by the Department for which there is a therapeutically interchangeable alternate medication identified by the Department. Therapeutically interchangeable means a medication that is interchangeable with another medication within the same pharmacologic or therapeutic class and is at least as effective as the medication for which it is being interchanged. The Director may exempt a drug from the prior authorization requirement described in Section 663 of this chapter of rules, based upon appropriate criteria, including the following: safety, effectiveness, clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, cost, and the recommendation of the Pharmacy And Therapeutics Committee (P&T Committee). The Department determines, and will make available to providers, which drugs are therapeutically interchangeable using a number of resources that may include:~~ (3-30-07)

- ~~i. Peer-reviewed medical literature;~~ (3-30-07)
- ~~ii. Randomized clinical trials;~~ (3-30-07)
- ~~iii. Drug comparison studies;~~ (3-30-07)
- ~~iv. Pharmacoeconomic studies;~~ (3-30-07)

- v. ~~Outcomes research data;~~ (3-30-07)
- vi. ~~Idaho practice guidelines; and~~ (3-30-07)
- vii. ~~Consultation with practicing physicians, pharmacists, and the Idaho Medicaid Medical Director.~~ (3-30-07)
- f. ~~Medications prescribed in quantities which exceed the Food and Drug Administration (FDA) dosage guidelines.~~ (3-30-07)
- g. ~~Lipase inhibitors.~~ (3-30-07)
- h. ~~Medications prescribed outside of the Food and Drug Administration approved indications.~~ (3-30-07)
- i. ~~Medications excluded in Subsection 662.04 of these rules that the Department accepts for other medically approved indications.~~ (3-30-07)

02. Prior Authorization Criteria. Criteria for prior authorization for individual drugs and drug classes will be determined by the Department, and will include: ()

- a. Food and Drug Administration (FDA) indications and labeling, including dosage guidelines.()
- b. Compendia of drug information recognized by the Centers for Medicare and Medicaid Services (CMS), including: ()
 - i. American Hospital Formulary Service-Drug Information; ()
 - ii. United States Pharmacopeia-Drug Information, or its successor publications; and ()
 - iii. The DrugDex Information System. ()
- c. Evidence-based, peer-reviewed, published medical literature, including: ()
 - i. Systematic reviews; ()
 - ii. Randomized controlled trials; and ()
 - iii. Meta-analysis studies. ()
- d. Guidelines and case-controlled studies may be considered where systematic reviews, randomized controlled trials and meta-analysis studies do not exist. ()
- e. The requested drug's preferred drug status. ()

023. Request for Prior Authorization. ()

a. The prior authorization procedure is initiated by the prescriber who must submit the request to the Department in the format prescribed by the Department. (3-30-07)

b. Whenever possible, the Department will use automated authorization, in which claims are adjudicated at point of sale using submitted National Council for Prescription Drug Programs (NCPDP) data elements or claims history to verify that the Department's authorization requirements have been satisfied, without the need for the prescriber to submit additional clinical information. ()

034. Notice of Decision. The Department will determine coverage based on this request, and will notify

the participant of a denial. The participant has twenty-eight (28) days from the date the denial letter is mailed to appeal the decision. Hearings will be conducted in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-07)()

045. Emergency Situation. The Department will provide for the dispensing of at least a seventy-two (72) hour supply of a covered outpatient prescription drug in an emergency situation as required in 42 U.S.C. 1396r-8(d)(5)(B). (3-30-07)

056. Response to Request. The Department will respond within twenty-four (24) hours to a request for prior authorization of a covered outpatient prescription drug as required in 42 U.S.C. 1396r-8(d)(5)(A). (3-30-07)

07. Prohibition Against Cash Payment for Controlled Substances. Pharmacy providers are prohibited from accepting cash as payment for controlled substances from persons known to be Medicaid participants. ()

068. Supplemental Rebates. (3-30-07)

a. Purpose. The purpose of supplemental rebates is to enable the Department to purchase prescription drugs provided to Medicaid participants in a cost-effective manner, ~~whether or not these drugs are subject to prior authorization by the Department.~~ The supplemental rebate may be one (1) factor considered in ~~exempting a prescription drug from prior authorization~~ determining a drug's preferred drug status, but it is secondary to considerations of the safety, effectiveness, and clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs. (3-30-07)()

b. Rebate Amount. The Department may negotiate with manufacturers supplemental rebates for prescription drugs that are in addition to those required by Title XIX of the Social Security Act. There is no upper limit on the dollar amounts of the supplemental rebates the Department may negotiate. (3-30-07)

079. Comparative Costs to be Considered. Whenever possible, physicians and pharmacists are encouraged to utilize less expensive drugs and drug therapies. (3-30-07)

664. PRESCRIPTION DRUGS: PROVIDER QUALIFICATIONS AND DUTIES.

01. Payment for Covered Drugs. Payment will be made, as provided in Section 665 of these rules, only to pharmacies registered with the Department as a provider for the specific location where the service was performed. An out of the state pharmacy shipping or mailing a prescription into Idaho must have a valid mail order license issued by the Idaho Board of Pharmacy and be properly enrolled as a Medicaid provider. (3-30-07)

02. Dispensing Procedures. The following protocol must be followed for proper prescription filling. (3-30-07)

a. Prescription Drug Refills. Refills of prescription drugs must be authorized by the prescriber on the original or new prescription order on file and each refill must be recorded on the prescription or logbook, or computer print-out, or on the participant's medication profile. (3-30-07)

b. Automatic Refills. ()

i. Automatic refills are not allowed for Idaho Medicaid participants. A request specific to each medication is required. ()

ii. All prescription refills must be initiated by a request from the participant, the prescriber, or another person, such as a family member, acting as an agent of the participant. ()

iii. Authorization for each prescription refill must be received prior to the beginning of the filling process by the pharmacy. ()

bc. Dispensing Prescription Drugs. Prescriptions must be dispensed according to: (3-30-07)

- i. 21 CFR Section 1300, et seq.; (3-30-07)
- ii. Title 54, Chapter 17, and Title 37, Chapters 1, 27, and 32, Idaho Code; ~~(3-30-07)~~()
- iii. IDAPA 27.01.0~~3~~, “Rules ~~of the Idaho State Board of~~ Governing Pharmacy Practice”; and ~~(3-30-07)~~()
- iv. Sections 660 through 666 of these rules. (3-30-07)

ed. Prescriptions on File. Prescriptions must be maintained on file in pharmacies in such a manner that they are available for immediate review by the Department upon written request. (3-30-07)

03. Return of Unused Prescription Drugs. When prescription drugs were dispensed in unit dose packaging, as defined by IDAPA 27.01.0~~3~~, “Rules ~~of the Idaho State Board of~~ Governing Pharmacy Practice,” and the participant for whom the drugs were prescribed no longer uses them: ~~(3-30-07)~~()

a. A licensed skilled nursing care facility may return unused drugs dispensed in unit dose packaging to the pharmacy provider that dispensed the medication. (3-30-07)

b. A residential or assisted living facility may return unused drugs dispensed in unit dose packaging to the pharmacy provider that dispensed the medication. (3-30-07)

04. Pharmacy Provider Receiving Unused Prescription Drugs. In order for a pharmacy provider to receive unused prescription drugs that it dispensed in unit dose packaging and that are being returned by a facility identified in Subsection 664.03 of this rule, the pharmacy provider: (3-30-07)

a. Must comply with IDAPA 27.01.0~~3~~, “Rules ~~of the Idaho State Board of~~ Governing Pharmacy Practice,” regarding unit dose packaging; ~~(3-30-07)~~()

b. Must credit the Department the amount billed for the cost of the drug less the professional dispensing fee; and ~~(3-30-07)~~()

c. May receive a fee for acceptance of returned unused prescription drugs. The value of the unused prescription drug being returned must be such that return of the drug is cost-effective as determined by the Department. (3-30-07)

665. PRESCRIPTION DRUGS: PROVIDER REIMBURSEMENT.

~~All medications dispensed to~~ With specific exceptions as set forth in Subsections 665.01 through 665.04 of this rule, Idaho Medicaid ~~participants will be~~ pharmacy providers are reimbursed based on actual acquisition costs. ~~All medications administered to participants by physicians or other qualified and licensed providers must be reimbursed based on Medicare rates as directed in Section 56-265, Idaho Code, or if no Medicare rate is available, based on actual acquisition cost.~~ Idaho Medicaid may require providers to supply documentation of their acquisition costs as described in the Medicaid Pharmacy Claims Submission Manual available at: https://idaho.fhsc.com/downloads/providers/IDRx_Pharmacy_Claims_Submission_Manual.pdf. Reimbursement is restricted to those drugs supplied from labelers that are participating in the CMS Medicaid Drug Rebate Program. ~~(4-1-17)~~()

01. Pharmacy Reimbursement. Prescriptions not filled in accordance with the provisions of Subsection 664.02 of these rules will be subject to nonpayment or recoupment. The following protocol must be followed for proper reimbursement. (4-1-17)

a. Filing Claims. Pharmacies must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. Upon request, the contractor will provide pharmacies with a supply of claim forms. The form must include information described in the pharmacy guidelines issued by the Department. (4-1-17)

~~**b.** Claim Form Review. Each claim form may be subject to review by a contract claim examiner, a~~

~~pharmaceutical consultant, or a medical consultant.~~

~~(3-30-07)~~

~~eb.~~ Billed Charges. A pharmacy's billed charges are not to exceed the usual and customary charges defined as the lowest charge by the provider to the general public for the same service including advertised specials. (3-30-07)

~~ec.~~ Reimbursement. Reimbursement to pharmacies is limited to the lowest of the following: (3-30-07)

i. ~~Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the professional dispensing fee assigned by the Department~~ Actual Acquisition Cost (AAC) based on results of the periodic state cost survey as defined in this rule, plus the assigned professional dispensing fee. In cases where no AAC is available, reimbursement will be the Wholesale Acquisition Cost (WAC). WAC will mean the price, for a given calendar quarter, paid by a wholesaler for the drugs purchased from the wholesaler's supplier. The wholesaler's supplier is typically the manufacturer of the drug as published by a recognized compendium of drug pricing for the same calendar quarter; ~~(4-1-17)()~~

ii. State Maximum Allowable Cost (SMAC), as established by the Department, plus the assigned professional dispensing fee; (4-1-17)

iii. ~~Actual Acquisition Cost (AAC) based on results of the periodic state cost survey as defined in this rule, plus the assigned professional dispensing fee. In cases where no AAC is available, reimbursement will be the Wholesale Acquisition Cost (WAC). WAC will mean the price, paid by a wholesaler for the drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug as published by a recognized compendia of drug pricing on the last day of the calendar quarter that corresponds to the calendar quarter~~ Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the professional dispensing fee assigned by the Department; or ~~(4-1-17)()~~

iv. The ~~pharmacy's provider's billed charges as defined in Subsection 665.01 of this rule~~ usual and customary charge to the general public. ~~(4-1-17)()~~

~~ed.~~ Periodic State Cost Surveys. The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid ~~Pharmacy~~ Program are required to participate in these periodic state cost surveys by disclosing the costs of all drugs. A pharmacy that is non-responsive to the periodic state cost surveys can be disenrolled as a Medicaid provider by the Department. ~~(4-1-17)()~~

~~e.~~ Physician Administered Drugs. ()

i. Reimbursement to providers that are not 340B covered entities for medications administered to Medicaid participants by physicians or other qualified and licensed providers will be ninety percent (90%) of the published Medicare Average Sales Price plus six percent (6%) rate (ASP+6% rate). If the ASP+6% rate is not available, payment will be at the Wholesale Acquisition Cost (WAC). ()

ii. Reimbursement to 340B covered entities for medications administered to Medicaid participants by physicians or other qualified and licensed providers will be the actual 340B drug acquisition cost, not to exceed the 340B ceiling price. ()

~~f.~~ Clotting Factors. ()

i. Reimbursement to specialty pharmacies will be at a state-based price equivalent to the published Medicare ASP+6% rate, plus the assigned professional dispensing fee. ()

ii. Reimbursement to Hemophilia Treatment Centers will be the 340B actual acquisition cost, not to exceed the 340B ceiling price. ()

~~g.~~ Professional Dispensing Fee. Professional Dispensing Fee is defined as a tier-based amount paid on a pharmacy claim, over and above the ingredient cost, to compensate the provider for the pharmacist's professional

services related to dispensing a prescription to a Medicaid participant, including: ()

- i. Looking up information about a participant's coverage on the computer: ()
- ii. Performing drug use reviews and preferred drug list review activities: ()
- iii. Measuring or mixing the covered outpatient drug: ()
- iv. Filling the container: ()
- v. Participant counseling: ()
- vi. Physically providing the completed prescription to the Medicaid participant: ()
- vii. Special packaging; and ()
- viii. Overhead associated with maintaining the facility and equipment necessary to operate the dispensing entity. ()

fl. Limitations on Payment of Professional Dispensing Fee. Only one (1) professional dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: (4-1-17)()

- i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (3-30-07)
- ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; (3-30-07)
- iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (3-30-07)
- iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (3-30-07)

i. Tier-Based Professional Dispensing Fees. A professional dispensing fee for each pharmacy provider will be established in accordance with this rule. ()

gi. Claims Volume Survey for Tier-Based Professional Dispensing Fees. The Department will survey pharmacy providers to establish a professional dispensing fee for each provider. The professional dispensing fees will be paid based on the provider's total annual claims volume. The provider must return the claims volume survey to the Department no later than May 31st each year. Pharmacy providers who do not complete the annual claims volume survey will be assigned the lowest professional dispensing fee starting on July 1st until the next annual survey is completed. Based upon the annual claims volume of the enrolled pharmacy, the professional dispensing fee is provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. (4-1-17)

hk. Remittance Advice. Claims are processed by computer, and payments are made directly to the pharmacy or its designated bank through electronic funds transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. (4-1-17)

02. 340B Covered Entity Reimbursement. (4-1-17)

a. Participation as a 340B Covered Entity. Medicaid will reimburse 340B covered entities as defined in Section 340B of the Public Health Service Act, codified under 42 U.S.C. 256b(a)(4), when the provider meets the following requirements: (4-1-17)

i. A 340B covered entity may receive reimbursement for drugs provided to Idaho Medicaid participants through the 340B drug pricing program if the 340B covered entity submits its unique 340B identification number issued by the Health Resources and Services Administration (HRSA) and a copy of its completed HRSA 340B registration to Idaho Medicaid. (4-1-17)

ii. A 340B covered entity that elects to provide drugs to Idaho Medicaid participants through the 340B drug pricing program must use 340B covered outpatient drugs for all dispensed or administered drugs, including those dispensed through the 340B covered entity's retail pharmacy or administered in an outpatient clinic. A 340B covered entity must ensure that a contract pharmacy does not dispense drugs, or receive Medicaid reimbursement for drugs, acquired by the 340B covered entity through the 340B drug pricing program. An entity that does not use 340B covered outpatient drugs for all dispensed or administered drugs, including those dispensed through the 340B covered entity's retail pharmacy or administered in an outpatient clinic, will be deemed to be carved out of the 340B drug pricing program and will be reimbursed for brand name and generic drugs as provided in Subsection 665.01 of this rule. (4-1-17)()

iii. A 340B covered entity must provide Idaho Medicaid with thirty (30) days advance written notice of its intent to discontinue the provision of drugs acquired through the 340B drug pricing program to Idaho Medicaid participants. (4-1-17)

b. Filing Claims. A 340B covered entity must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. The form must include information described in the pharmacy guidelines issued by the Department. (4-1-17)

c. ~~Claim Form Review~~ Reimbursement Exclusions. ~~Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant~~ Drugs acquired through the federal 340B drug pricing program and dispensed by 340B contract pharmacies are not covered. (4-1-17)()

d. ~~Billed Charges.~~ A 340B covered entity's billed charges are not to exceed the entity's actual 340B drug acquisition cost. (4-1-17)

e. Reimbursement. Reimbursement to 340B covered entities is limited to their actual 340B drug acquisition cost submitted, not to exceed the 340B ceiling price, plus the assigned professional dispensing fee. (4-1-17)()

f. Professional Dispensing Fee. Only one (1) professional dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: (4-1-17)

i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (4-1-17)

ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; (4-1-17)

iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (4-1-17)

iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (4-1-17)

g. Tier-Based Professional Dispensing Fees. A professional dispensing fee for each 340B covered entity will be established in accordance with this rule. (4-1-17)

h. Remittance Advice. Claims are processed by computer, and payments are made directly to the 340B covered entity or its designated bank through electronic funds transfer. A remittance advice with detailed

information of each claim transaction will accompany each payment made by the Department. (4-1-17)

03. Reimbursement for Drugs Dispensed by Other Provider Types. ()

a. Drugs acquired through non-340B Indian Health Service, Tribal, or Urban Indian pharmacies will be reimbursed at the actual acquisition cost to the entity, plus the assigned professional dispensing fee. ()

b. Drugs acquired via the Federal Supply Schedule (FSS) will be reimbursed at the FSS actual acquisition cost, plus the assigned professional dispensing fee. ()

c. Drugs acquired at nominal price, which is defined as pricing that is outside of 340B regulations or FSS, will be reimbursed at the actual acquisition cost, plus the assigned professional dispensing fee. ()

d. Specialty drugs not dispensed by retail community pharmacies and dispensed primarily through the mail will be reimbursed at the Idaho actual acquisition cost, if such cost is available, plus the professional dispensing fee. If the actual acquisition cost is not available, drugs will be reimbursed at the lower of the Wholesale Acquisition Cost (WAC) or State Maximum Allowable Cost (SMAC) as established by the Department, plus the assigned professional dispensing fee. ()

e. Drugs not distributed by a retail community pharmacy, such as drugs dispensed in a long-term care facility or dispensed to participants receiving swing-bed services, as described in Subsection 405.08 of these rules, will be reimbursed at the actual ingredient cost, plus the assigned professional dispensing fee. ()

04. Limitations on Payment. Medicaid payment for prescription drugs will be limited as follows: ()

a. Medication for Multiple Persons. When the medication dispensed is for more than one (1) person, Medicaid will only pay for the amount prescribed for the person or persons covered by Medicaid. ()

b. No Prior Authorization. Medicaid will not pay for a covered drug or pharmacy item that requires, but has not received, prior authorization for Medicaid payment as required in Section 663 of these rules. ()

c. Limitations to Discourage Waste. Medicaid may conduct drug utilization reviews and impose limitations for participants whose drug utilization exceeds the standard participant profile or disease management guidelines determined by the Department. ()

035. Return of Drugs. Drugs dispensed in unit dose packaging as defined by IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy General Provisions," Section 012, must be returned to the dispensing pharmacy when the participant no longer uses the medication as follows: (4-1-17)()

a. A pharmacy provider using unit dose packaging must comply with IDAPA 27.01.0103, "Rules of the Idaho State Board of Governing Pharmacy Practice," Section 146. (4-1-17)()

b. The pharmacy provider that receives the returned drugs must credit the Department the amount billed for the cost of the drug less the professional dispensing fee. (4-1-17)

c. The pharmacy provider may receive a fee for acceptance of returned unused drugs. The value of the unused drug being returned must be cost effective as determined by the Department. (3-30-07)

046. Cost Appeal Process. Cost appeals will be determined by the Department's process provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. (4-4-13)

666. PRESCRIPTION DRUGS: QUALITY ASSURANCE.

01. Pharmacy And Therapeutics Committee (P&T Committee). (3-30-07)

- a. Membership. The P&T Committee is appointed by the Director and is composed of practicing pharmacists, physicians and other licensed health care professionals with authority to prescribe medications. (3-30-07)
- b. Function. The P&T Committee has the following responsibilities for the prior authorization of drugs under Section 663 of these rules: (3-30-07)
- i. To serve in evaluational, educational and advisory capacities to the Idaho Medicaid **Pharmacy** Program specific to the prior authorization of drugs ~~with therapeutically interchangeable alternatives.~~ (3-30-07)()
- ii. To ~~receive review~~ evidence-based clinical and pharmacy economic data and recommend to the Department ~~the agents to be exempt from prior authorization in selected classes of drugs with therapeutically interchangeable alternatives. The recommendation of items to be exempt from prior authorization will be based primarily on objective evaluations of their relative safety, effectiveness, and clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, and secondarily on cost~~ **preferred and non-preferred drugs in classes designated for the Idaho Medicaid Preferred Drug List.** (3-30-07)()
- iii. To recommend to the Department the classes of medications to be reviewed through evidence-based evaluation. (3-30-07)
- iv. To review drug utilization outcome studies and intervention reports from the Drug Utilization Review Board as part of the process of reviewing and developing recommendations to the Department. (3-30-07)
- c. Meetings. The P&T Committee meetings will be open to the public and a portion of each meeting will be set aside to hear and review public comment. The P&T Committee may adjourn to executive session to consider the following: (3-30-07)
- i. Relative cost information for prescription drugs that could be used by representatives of pharmaceutical manufacturers or other people to derive the proprietary information of other pharmaceutical manufacturers; or (3-30-07)
- ii. Participant-specific or provider-specific information. (3-30-07)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1807

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code; also Section 1905(a) of the Social Security Act and House Bill 695 (2018).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

In House Bill 695 (2018), the Legislature directed the Department's Division of Medicaid to implement processes to improve the Non-Emergency Medical Transportation (NEMT) program. These processes will include developing and implementing a provider training program and conducting a rate review process to set reimbursement rates at a level that will enhance service quality and participant access. These rule changes are needed to meet the legislative intent of House Bill 695 (2018).

These rule changes add participation in provider training programs and rate-setting activities to the existing duties of the transportation broker described in this chapter.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, **Vol. 18-10, pages 205 and 206**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact for this docket to the State General Fund for SFY 2020. The fiscal impact is limited to the amount appropriated to IDHW by the legislature in House Bill 695 (2018) for SFY 2019 for the Division of Medicaid to develop and implement a Non-Emergency Medical Transportation (NEMT) provider training program and conduct a rate review process. The rate reviews will be used to establish the contracted per member per month rate, which could in turn produce a positive or negative fiscal impact.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Clay Lord at (208) 364-1979.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 56-202(b), Idaho Code; also Section 1905(a) of the Social Security Act and House Bill 695 (2018).

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

PUBLIC HEARING
Tuesday, October 16, 2018 - 11:00 a.m. (MDT)
Department of Health & Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East Boise, ID 83705
TELECONFERENCE CALL-IN
Toll Free: 1-877-820-7831 Participant Code: 701700

The hearing site 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:

In House Bill 695 (2018), the Legislature directed the Department's Division of Medicaid to implement processes to improve the Non-Emergency Medical Transportation (NEMT) program. These processes will include developing and implementing a provider training program and conducting a rate review process to set reimbursement rates at a level that will enhance service quality and participant access. These rule changes are needed to meet the legislative intent of House Bill 695 (2018).

These rule changes add participation in provider training programs and rate-setting activities to the existing duties of the transportation broker described in this chapter.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact for this docket to the State General Fund for SFY 2020. The fiscal impact is limited to the amount appropriated to IDHW by the legislature in House Bill 695 (2018) for SFY 2019 for the Division of Medicaid to develop and implement a Non-Emergency Medical Transportation (NEMT) provider training program and conduct a rate review process. The rate reviews will be used to establish the contracted per member per month rate, which could in turn produce a positive or negative fiscal impact.

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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 109 and 110](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Clay Lord at (208) 364-1979.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1807

873. NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES: REIMBURSEMENT METHODOLOGY.

The Department will reimburse the NEMT services broker a fixed, actuarially sound amount per member per month based on the cost of efficiently delivered, timely, and safe non-emergency medical transportation for eligible Idaho Medicaid participants and the cost for efficient administration of the brokerage program. ()

8734. -- 879. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1808

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

These proposed changes align definitions for CBRS in schools and in the community. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 207 through 218](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking has no anticipated fiscal impact to the state general fund or to any other funds

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Angie Williams at (208) 287-1169.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 56-202(b), Idaho Code.

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

PUBLIC HEARING - LIVE MEETING
Wednesday, October 24, 2018 3:30 - 4:30p.m. (MT)
Medicaid Central Office 3232 Elder St. Conf. Room D West & East Boise, ID 83705

VIDEO CONFERENCE Eastern Idaho - DHW Office	VIDEO CONFERENCE Northern Idaho - DHW Office
Wednesday, October 24, 2018 3:30 - 4:30p.m. (MT)	Wednesday, October 24, 2018 2:30 - 3:30p.m. (PT)
1070 Hilina Road (Brown Brick Building) Second Floor, Ste. 230 VC Conf. Room Pocatello, ID 83201	1120 Ironwood Drive Suite 102 Lower Level - Large Conf. Room Coeur d'Alene, ID 83814

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:

These proposed changes align definitions for Community Based Rehabilitation Services (CBRS) in schools and in the community.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking has no anticipated fiscal impact to the state general fund or to any other funds.

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 July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 111 and 112](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Angie Williams, (208) 287-1169.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1808

850. SCHOOL-BASED SERVICE: DEFINITIONS.

01. Activities of Daily Living (ADL) for Personal Care Services. The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (7-1-16)

02. Educational Services. Services that are provided in buildings, rooms, or areas designated or used as a school or an educational setting, which are provided during the specific hours and time periods in which the educational instruction takes place in the school day and period of time for these students, which are included in the individual educational plan (IEP) for the student. (7-1-16)

03. School-Based Services. School-based services are health-related and rehabilitative services provided by Idaho public school districts and charter schools under the Individuals with Disabilities Education Act (IDEA). (7-1-13)

04. The Psychiatric Rehabilitation Association (PRA). An association that works to improve and promote the practice and outcomes of psychiatric rehabilitation and recovery. The PRA also maintains a certification program to promote the use of qualified staff to work for individuals with mental illness. <http://www.uspra.org>. (7-1-16)

05. PRA Credential. Certificate or certification in psychiatric rehabilitation based upon the primary population with whom the individual works in accordance with the requirements set by the PRA. ()

~~056.~~ **Practitioner of the Healing Arts.** A physician's assistant, nurse practitioner, or clinical nurse specialist who is licensed and approved by the state of Idaho to make such recommendations or referrals for Medicaid services. (7-1-13)

~~067.~~ **Serious Mental Illness (SMI).** In accordance with 42 CFR 483.102(b)(1), a person with SMI: (3-20-14)

a. Currently or at any time during the year, must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-V; and (3-20-14)

b. Must have a functional impairment that substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. Instrumental living skills include maintaining a household, managing money, getting around the community, and taking prescribed medication. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. (3-20-14)

~~0-78.~~ **Serious and Persistent Mental Illness (SPMI).** A participant must meet the criteria for SMI, have at least one (1) additional functional impairment, and have a diagnosis under DSM-V with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

852. SCHOOL-BASED SERVICE: SERVICE-SPECIFIC PARTICIPANT ELIGIBILITY.

Skills Building/Community Based Rehabilitation Services (CBRS). Behavioral Intervention, Behavioral Consultation, and Personal Care Services (PCS) have additional eligibility requirements. (7-1-16)()

01. Skills Building/Community Based Rehabilitation Services (CBRS). To be eligible for Skills Building/CBRS, the student *participant* must meet one (1) of the following: (7-1-16)()

a. A student who is a child under eighteen (18) years of age must meet the Serious Emotional Disturbance (SED) eligibility criteria for children in accordance with the Children's Mental Health Services Act, Section 16-2403, Idaho Code. A child who meets the criteria for SED must experience a substantial impairment in functioning. The child's level and type of functional impairment must be documented in the school record. A Department-approved assessment must be used to obtain the child's initial functional impairment score. Subsequent scores must be obtained at least annually in order to determine the child's change in functioning that occurs as a result of mental health treatment. (7-1-16)

b. A student who is eighteen (18) years old or older must meet the criteria of Serious and Persistent Mental Illness (SPMI). This requires that a student participant meet the criteria for SMI, as described in 42 CFR 483.102(b)(1), have at least one (1) additional functional impairment, and have a diagnosis under DSM-V, or later edition, with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. In addition, the psychiatric disorder must be of sufficient severity to affect the participant's functional skills negatively, causing a substantial disturbance in role performance or coping skills in at least two (2) of the areas listed below on either a continuous or intermittent basis, at least once per year. The skill areas that are targeted must be consistent with the participant's ability to engage and benefit from treatment. The detail of the participant's level and type of functional impairment must be documented in the medical record in the following areas: (7-1-16)

- i. Vocational/educational; (3-20-14)
- ii. Financial; (3-20-14)
- iii. Social relationships/support; (3-20-14)
- iv. Family; (3-20-14)
- v. Basic living skills; (3-20-14)

- vi. Housing; (3-20-14)
- vii. Community/legal; or (3-20-14)
- viii. Health/medical. (3-20-14)

02. Behavioral Intervention and Behavioral Consultation. To be eligible for behavioral intervention and behavioral consultation services, the student must: (3-20-14)

a. Meet the criteria for developmental disabilities as identified in Section 66-402(5), Idaho Code, and have documentation to support eligibility using the standards under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501-503; and (7-1-16)

b. Exhibit maladaptive behaviors that include frequent disruptive behaviors, aggression, self-injury, criminal or dangerous behavior evidenced by a score of at least one point five (1.5) standard deviations from the mean in at least two (2) behavior domains and by a rater familiar with the student, or at least two (2) standard deviations from the mean in one (1) composite score that consists of at least three (3) behavior domains by a rater familiar with the student, on a standardized behavioral assessment approved by the Department; and (7-1-16)

c. Have maladaptive behaviors that interfere with the student's ability to access an education. (3-20-14)

03. Personal Care Services. To be eligible for personal care services (PCS), the student must have a completed children's PCS assessment and allocation tool approved by the Department. To determine eligibility for PCS, the assessment results must find the student requires PCS due to a medical condition that impairs the physical or functional abilities of the student. (7-1-16)

853. SCHOOL-BASED SERVICE: COVERAGE AND LIMITATIONS.

The Department will pay school districts and charter schools for covered rehabilitative and health-related services. Services include medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code. (7-1-13)

01. Excluded Services. The following services are excluded from Medicaid payments to school-based programs: (3-30-07)

a. Vocational Services. (3-30-07)

b. Educational Services. Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education. Evaluations completed for educational services only cannot be billed. (3-30-07)

c. Recreational Services. (3-30-07)

d. Payment for school-related services will not be provided to students who are inpatients in nursing homes or hospitals. (7-1-16)

02. Evaluation and Diagnostic Services. Evaluations to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must: (3-30-07)

a. Be recommended or referred by a physician or other practitioner of the healing arts. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to the signed and dated recommendation or referral; (3-28-18)

b. Be conducted by qualified professionals for the respective discipline as defined in Section 855 of

these rules; (3-20-14)

- c. Be directed toward a diagnosis; (7-1-16)
- d. Include recommended interventions to address each need; and (7-1-16)
- e. Include name, title, and signature of the person conducting the evaluation. (7-1-16)

03. Reimbursable Services. School districts and charter schools can bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts for the Medicaid services for which the school district or charter school is seeking reimbursement. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to the signed and dated recommendation or referral. The recommendations or referrals are valid up to three hundred sixty-five (365) days. (3-28-18)

a. Behavioral Intervention. Behavioral Intervention is used to promote the student's ability to participate in educational services, as defined in Section 850 of these rules, through a consistent, assertive, and continuous intervention process to address behavior goals identified on the IEP. It includes the development of replacement behaviors by conducting a functional behavior assessment and behavior implementation plan with the purpose of preventing or treating behavioral conditions for students who exhibit maladaptive behaviors. Services include individual or group behavioral interventions. (7-1-16)

i. Group services must be provided by one (1) qualified staff providing direct services for a maximum of three (3) students. (7-1-16)

ii. As the number and severity of the students with behavioral issues increases, the staff-to-student ratio must be adjusted accordingly. (7-1-16)

iii. Group services should only be delivered when the child's goals relate to benefiting from group interaction. (7-1-13)

b. Behavioral Consultation. Behavioral consultation assists other service professionals by consulting with the IEP team during the assessment process, performing advanced assessment, coordinating the implementation of the behavior implementation plan and providing ongoing training to the behavioral interventionist and other team members. (7-1-13)

i. Behavioral consultation cannot be provided as a direct intervention service. (7-1-13)

ii. Behavioral consultation must be limited to thirty-six (36) hours per student per year. (7-1-13)

c. Medical Equipment and Supplies. Medical equipment and supplies that are covered by Medicaid must be medically necessary, ordered by a physician, and prior authorized. Authorized items must be for use at the school where the service is provided. Equipment that is too large or unsanitary to transport from home to school and back may be covered, if prior authorized. The equipment and supplies must be for the student's exclusive use and must be transferred with the student if the student changes schools. All equipment purchased by Medicaid belongs to the student. (7-1-16)

d. Nursing Services. Skilled nursing services must be provided by a licensed nurse, within the scope of his or her practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed. (7-1-16)

e. Occupational Therapy and Evaluation. Occupational therapy and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed. (3-30-07)

f. Personal Care Services. School based personal care services include medically oriented tasks having to do with the student's physical or functional requirements. Personal care services do not require a goal on the plan of service. The provider must deliver at least one (1) of the following services: (7-1-16)

- i. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care; (7-1-13)
- ii. Assistance with bladder or bowel requirements that may include helping the student to and from the bathroom or assisting the student with bathroom routines; (7-1-16)
- iii. Assistance with food, nutrition, and diet activities including preparation of meals if incidental to medical need; (7-1-13)
- iv. Assisting the student with physician-ordered medications that are ordinarily self-administered, in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 490.05; (7-1-13)
- v. Non-nasogastric gastrostomy tube feedings, if the task is not complex and can be safely performed in the given student care situation, and the requirements are met in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 303.01. (7-1-13)
- g. Physical Therapy and Evaluation. (3-30-07)
- h. Psychological Evaluation. (3-30-07)
- i. Psychotherapy. (3-30-07)
- j. Skills Building/Community Based Rehabilitation Services (CBRS) ~~Services and Evaluation. Community Based Rehabilitation Services and evaluation services that~~ Skills Building/CBRS are interventions to reduce the student's disability by assisting in gaining and utilizing skills necessary to participate in school. They are designed to build competency and confidence while increasing mental health and/or decreasing behavioral symptoms. Skills Building/CBRS provides ~~T~~training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, and coping skills ~~are types of interventions that may be reimbursed. This~~ These services ~~is~~ are intended to prevent placement of the student into a more restrictive educational situation. (7-1-16)()
- k. Speech/Audiological Therapy and Evaluation. (3-30-07)
- l. Social History and Evaluation. (3-30-07)
- m. Transportation Services. School districts and charter schools can receive reimbursement for mileage for transporting a student to and from home and school when: (7-1-16)
 - i. The student requires special transportation assistance, a wheelchair lift, an attendant, or both, when medically necessary for the health and safety of the student; (3-28-18)
 - ii. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; (3-30-07)
 - iii. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; (3-30-07)
 - iv. Both the Medicaid-covered service and the need for the special transportation are included on the student's plan; and (3-30-07)
 - v. The mileage, as well as the services performed by the attendant, are documented. See Section 855 of these rules for documentation requirements. (3-20-14)
- n. Interpretive Services. Interpretive services needed by a student who is deaf or does not adequately speak or understand English and requires an interpreter to communicate with the professional or paraprofessional providing the student with a health-related service may be billed with the following limitations: (7-1-13)

- i. Payment for interpretive services is limited to the specific time that the student is receiving the health-related service; documentation for interpretive service must include the Medicaid reimbursable health-related service being provided while the interpretive service is provided. (7-1-16)
- ii. Both the Medicaid-covered service and the need for interpretive services must be included on the student's plan; and (3-30-07)
- iii. Interpretive services are not covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

855. SCHOOL-BASED SERVICE: PROVIDER QUALIFICATIONS AND DUTIES.

Medicaid will only reimburse for services provided by qualified staff. The following are the minimum qualifications for providers of covered services: (7-1-13)

01. Behavioral Intervention. Behavioral intervention must be provided by or under the supervision of a professional. (7-1-13)

a. A behavioral intervention professional must meet the following: (7-1-13)

i. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028; or (7-1-13)

ii. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019; or (7-1-13)

iii. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 029; or (7-1-13)

iv. Habilitative intervention professional who meets the requirements defined in IDAPA 16.03.10 "Medicaid Enhanced Plan Benefits," Section 685; or (7-1-13)

v. Individuals employed by a school as certified Intensive Behavioral Intervention (IBI) professionals prior to July 1, 2013, are qualified to provide behavioral intervention; and (7-1-13)

vi. Must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. This can be achieved by previous work experience gained through paid employment, university practicum experience, or internship. It can also be achieved by increased on-the-job supervision experience gained during employment at a school district or charter school. (7-1-13)

b. A paraprofessional under the direction of a qualified behavioral intervention professional, must meet the following: (7-1-13)

i. Must be at least eighteen (18) years of age; (7-1-13)

ii. Demonstrate the knowledge, have the skills needed to support the program to which they are assigned; and (7-1-16)

iii. Must meet the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title 1, Part A, Section 1119. (7-1-13)

c. A paraprofessional delivering behavioral intervention services must be under the supervision of a

behavioral intervention professional or behavioral consultation provider. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the behavioral intervention service. (7-1-13)

02. Behavioral Consultation. Behavioral consultation must be provided by a professional who has a Doctoral or Master's degree in psychology, education, applied behavioral analysis, or has a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and who meets one (1) of the following: (7-1-13)

a. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028. (7-1-13)

b. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019. (7-1-13)

c. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity" Section 029. (7-1-13)

d. An individual with a Pupil Personnel Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 027, excluding a licensed registered nurse or audiologist. (7-1-13)

e. An occupational therapist who is qualified and registered to practice in Idaho. (7-1-13)

f. Therapeutic consultation professional who meets the requirements defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 685. (7-1-13)

03. Medical Equipment and Supplies. See Subsection 853.03 of these rules. (3-20-14)

04. Nursing Services. Nursing services must be provided by a licensed registered nurse (RN) or by a licensed practical nurse (LPN) licensed to practice in Idaho. (7-1-13)

05. Occupational Therapy and Evaluation. For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

06. Personal Care Services. Personal care services must be provided by or under the direction of a registered nurse licensed by the State of Idaho. (7-1-13)

a. Providers of PCS must have at least one (1) of the following qualifications: (7-1-13)

i. Licensed Registered Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a licensed registered nurse; (7-1-13)

ii. Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; (7-1-16)

iii. Certified Nursing Assistant (CNA). A person currently certified by the State of Idaho; or (7-1-16)

iv. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services and meets the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title 1, Part A, Section 1119. The assistant must be at least age eighteen (18) years of age. Medically-oriented services may be delegated to an aide in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." The licensed registered nurse may require a CNA if, in their professional judgment, the student's medical condition warrants a CNA. (7-1-16)

b. The licensed registered nurse (RN) must review or complete, or both, the PCS assessment and

develop or review, or both, the written plan of care annually. Oversight provided by the RN must include all of the following: (7-1-16)

- i. Development of the written PCS plan of care; (7-1-13)
- ii. Review of the treatment given by the personal assistant through a review of the student's PCS service detail reports as maintained by the provider; and (7-1-16)
- iii. Reevaluation of the plan of care as necessary, but at least annually. (7-1-13)
- c. The RN must conduct supervisory visits on a quarterly basis, or more frequently as determined by the IEP team and defined as part of the PCS plan of care. (7-1-16)

07. Physical Therapy and Evaluation. For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

08. Psychological Evaluation. A psychological evaluation must be provided by a: (7-1-13)

- a. Licensed psychiatrist; (7-1-13)
- b. Licensed physician; (7-1-13)
- c. Licensed psychologist; (7-1-13)
- d. Psychologist extender registered with the Bureau of Occupational Licenses; or (7-1-13)
- e. Endorsed or certified school psychologist. (7-1-16)

09. Psychotherapy. Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials: (7-1-13)

- a. Psychiatrist, M.D.; (7-1-13)
- b. Physician, M.D.; (7-1-13)
- c. Licensed psychologist; (7-1-13)
- d. Licensed clinical social worker; (7-1-13)
- e. Licensed clinical professional counselor; (7-1-13)
- f. Licensed marriage and family therapist; (7-1-13)
- g. Certified psychiatric nurse (R.N.), as described in Subsection 707.13 of these rules; (7-1-13)
- h. Licensed professional counselor whose provision of psychotherapy is supervised in compliance with IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; (7-1-13)
- i. Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; (7-1-13)
- j. Licensed associate marriage and family therapist whose provision of psychotherapy is supervised as described in IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; or (7-1-13)
- k. Psychologist extender, registered with the Bureau of Occupational Licenses, whose provision of

diagnostic services is supervised in compliance with IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners.” (7-1-13)

10. Skills Building/Community Based Rehabilitation Services (CBRS). Skills Building/CBRS must be provided by one (1) of the following. Skills Building/Community Based Rehabilitation Services (CBRS) providers who is not required to have a PRA credential must be one (1) of the following: (7-1-16)()

- a. Licensed physician, licensed practitioner of the healing arts; (7-1-16)
- b. Advanced practice registered nurse; (7-1-16)
- c. Licensed psychologist; (7-1-13)
- d. Licensed clinical professional counselor or professional counselor; (7-1-13)
- e. Licensed marriage and family therapist; (7-1-16)
- f. Licensed masters social worker, licensed clinical social worker, or licensed social worker; (7-1-13)
- g. Psychologist extender registered with the Bureau of Occupational Licenses; (7-1-13)
- h. Licensed registered nurse (RN); (7-1-13)
- i. Licensed occupational therapist; (7-1-13)
- j. Endorsed or certified school psychologist; (7-1-16)
- k. Skills Building/Community Based Rehabilitation Services specialist. A Skills Building/CBRS specialist is must: (7-1-16)()

i. Be An individual who has a Bachelor’s degree and holds a current PRA credential; or (3-20-14)()

ii. Be An individual who has a Bachelor’s degree or higher, but does not hold a current PRA credential and was hired on or after November 1, 2010, to work as a Skills Building/CBRS specialist to deliver Medicaid-reimbursable mental health services. This individual may continue to do so provide Medicaid-reimbursable Skills Building/CBRS without a current PRA credential for a period not to exceed thirty (30) months from the initial date of hire. This thirty-month (30) period does not restart with new employment as a Skills Building/CBRS specialist when transferring to a new school district, charter school, or agency. The individual must show documentation that they are working towards this certification obtaining the required PRA credential. In order to continue providing Skills Building/CBRS as a Skills Building/CBRS specialist beyond a total period of thirty (30) months from the date of hire, the worker individual must have completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom he works in accordance with the requirements set by the PRA obtained the required current PRA credential; (7-1-16)()

iii. Be under the supervision of a licensed behavioral health professional, a physician, nurse, or an endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision of the specialist to review treatment provided to student participants on an ongoing basis. The frequency of the one-to-one (1:1) supervision must occur at least on a monthly basis. Supervision can be conducted using telehealth when it is equally effective as direct on-site supervision; and ()

iv. Have a Credential required for CBRS specialists. (7-1-16)()

(1) Applicants Skills Building/CBRS specialists who intend to work primarily with adults, age eighteen (18) or older, must become a Certified Psychiatric Rehabilitation Practitioner in accordance with the PRA requirements obtain a current PRA credential to work with adults. (3-20-14)()

~~(a) Applicants must be under the supervision of a licensed behavioral health professional, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis. (7-1-16)~~

~~(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on-site supervision. (7-1-16)~~

(2) Applicants Skills Building/CBRS specialists who intend to work primarily with adults, but also ~~intend to work~~ with participants under the age of eighteen (18), must obtain a current PRA credential to work with adults, and must have additional training addressing children's developmental milestones, or have evidence of classroom hours in equivalent courses. The ~~worker's individual's~~ supervisor must determine the scope and amount of training the worker individual needs in order to work competently with children assigned to the ~~worker's individual's~~ caseload. (3-20-14)()

~~(a) Applicants must be under the supervision of a licensed behavioral health professional staff, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis. (7-1-16)~~

~~(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on-site supervision. (7-1-16)~~

(3) Applicants Skills Building/CBRS specialists who intend to work primarily with children under the age of eighteen (18) must obtain a ~~certificate in children's psychiatric rehabilitation in accordance with the PRA requirements~~ current PRA credential to work with children. (3-20-14)()

(4) Applicants Skills Building/CBRS specialists who intend to primarily work with children, but ~~who~~ also ~~intend to~~ work with participants eighteen (18) years of age or older, must obtain a current PRA credential to work with children, and must have additional training or have evidence of classroom hours addressing adult issues in psychiatric rehabilitation. The ~~worker's individual's~~ supervisor must determine the scope and amount of training the worker needs in order to competently work with adults assigned to the ~~worker's individual's~~ caseload. (3-20-14)()

11. Speech/Audiological Therapy and Evaluation. For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

12. Social History and Evaluation. Social history and evaluation must be provided by a licensed registered nurse (RN), psychologist, M.D. school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. (7-1-13)

13. Transportation. Transportation must be provided by an individual who has a current Idaho driver's license and is covered under vehicle liability insurance that covers passengers for business use. (7-1-13)

14. Therapy Paraprofessionals. The schools may use paraprofessionals to provide occupational therapy, physical therapy, and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be delegated and supervised by a professional therapist as defined by the appropriate licensure and certification rules. The portions of the treatment plan that can be delegated to the paraprofessional must be identified in the IEP or transitional IFSP. (7-1-16)

a. Occupational Therapy (OT). Refer to IDAPA 24.06.01, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants," for qualifications, supervision, and service requirements. (7-1-16)

b. Physical Therapy (PT). Refer to IDAPA 24.13.01, "Rules Governing the Physical Therapy Licensure Board," for qualifications, supervision and service requirements. (7-1-16)

- c. Speech-Language Pathology (SLP). Refer to IDAPA 24.23.01, “Rule of the Speech and Hearing Services Licensure Board,” and the American Speech-Language-Hearing Association (ASHA) guidelines for qualifications, supervision and service requirements for speech-language pathology. The guidelines have been incorporated by reference in Section 004 of these rules. (7-1-16)
- i. Supervision must be provided by an SLP professional as defined in Section 734 of this chapter of rules. (7-1-16)
- ii. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the SLP service. (7-1-16)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1809

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b) and 56-264, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rule, regarding school-based Medicaid services, revises the definition of “personal assistant” to remove unnecessary job qualifications. The purpose of the rule is to make it easier for providers to offer services in a school-based setting. Under the new language, the job qualifications for school-based providers will be consistent with the job qualifications for community-based providers offering similar services.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 1, 2018, Idaho Administrative Bulletin, **Vol. 18-8, pages 83 through 88**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This is a technical change to the rule, changing the requirements to be a PCS provider in school settings to match the requirements for service providers outside of the school setting. This will not change the current process or provider types. There is no anticipated fiscal impact to state general funds, or any other funds as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Angie Williams, (208) 287-1169 or e-mail Angie.Williams@dhw.idaho.gov.

Dated this 4th day of October, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 56-264, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2018.

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:

Rules Governing Uniformity, IDAPA 08.02.02, updated the paraprofessional definition, and included language that stated that individuals not meeting the outlined requirements, would be considered a school or classroom aide. This change impacted school professionals by requiring a higher credential to provide services in school settings than is required for providers of the same service outside of the school setting (in the community). PCS paraprofessional provider qualifications are being updated for school-based services to align with community paraprofessional PCS provider qualifications.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), conferring a benefit, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These changes allow schools to meet the same requirements as the community providers, remove the additional requirements for services provided in school settings, and will help to ensure that children are getting the services they need while at school.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This is a technical change to the rule, changing the requirements to be a PCS provider in school settings to match the requirements for service providers outside of the school setting. This will not change the current process or provider types. There is no anticipated fiscal impact to state general funds, or any other funds as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a technical change to the rule. This will not change the current process or provider types that are currently used today.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Angie Williams, (208) 287-1169 or e-mail: Angie.Williams@dhw.idaho.gov.

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 August 22, 2018.

DATED this 29th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1809

855. SCHOOL-BASED SERVICE: PROVIDER QUALIFICATIONS AND DUTIES.

Medicaid will only reimburse for services provided by qualified staff. The following are the minimum qualifications for providers of covered services: (7-1-13)

01. Behavioral Intervention. Behavioral intervention must be provided by or under the supervision of a professional. (7-1-13)

a. A behavioral intervention professional must meet the following: (7-1-13)

i. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028; or (7-1-13)

ii. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019; or (7-1-13)

iii. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 029; or (7-1-13)

iv. Habilitative intervention professional who meets the requirements defined in IDAPA 16.03.10 "Medicaid Enhanced Plan Benefits," Section 685; or (7-1-13)

v. Individuals employed by a school as certified Intensive Behavioral Intervention (IBI) professionals prior to July 1, 2013, are qualified to provide behavioral intervention; and (7-1-13)

vi. Must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. This can be achieved by previous work experience gained through paid employment, university practicum experience, or internship. It can also be achieved by increased on-the-job supervision experience gained during employment at a school district or charter school. (7-1-13)

b. A paraprofessional under the direction of a qualified behavioral intervention professional, must meet the following: (7-1-13)

i. Must be at least eighteen (18) years of age; (7-1-13)

ii. Demonstrate the knowledge, have the skills needed to support the program to which they are assigned; and (7-1-16)

iii. Must meet the paraprofessional requirements under the Elementary and Secondary Education Act

of 1965, as amended, Title 1, Part A, Section 1119. (7-1-13)

c. A paraprofessional delivering behavioral intervention services must be under the supervision of a behavioral intervention professional or behavioral consultation provider. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the behavioral intervention service. (7-1-13)

02. Behavioral Consultation. Behavioral consultation must be provided by a professional who has a Doctoral or Master's degree in psychology, education, applied behavioral analysis, or has a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and who meets one (1) of the following: (7-1-13)

a. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028. (7-1-13)

b. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019. (7-1-13)

c. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity" Section 029. (7-1-13)

d. An individual with a Pupil Personnel Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 027, excluding a licensed registered nurse or audiologist. (7-1-13)

e. An occupational therapist who is qualified and registered to practice in Idaho. (7-1-13)

f. Therapeutic consultation professional who meets the requirements defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 685. (7-1-13)

03. Medical Equipment and Supplies. See Subsection 853.03 of these rules. (3-20-14)

04. Nursing Services. Nursing services must be provided by a licensed registered nurse (RN) or by a licensed practical nurse (LPN) licensed to practice in Idaho. (7-1-13)

05. Occupational Therapy and Evaluation. For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

06. Personal Care Services. Personal care services must be provided by or under the direction of a registered nurse licensed by the State of Idaho. (7-1-13)

a. Providers of PCS must have at least one (1) of the following qualifications: (7-1-13)

i. Licensed Registered Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a licensed registered nurse; (7-1-13)

ii. Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; (7-1-16)

iii. Certified Nursing Assistant (CNA). A person currently certified by the State of Idaho; or (7-1-16)

iv. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services ~~and meets the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title 1, Part A, Section 1119.~~ The assistant must be at least age eighteen (18) years of age. ~~Medically-oriented services may be delegated to an aide in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." The licensed registered nurse may require a CNA if, in their~~

~~professional judgment, the student's medical condition warrants a CNA.~~

~~(7-1-16)()~~

b. The licensed registered nurse (RN) must review or complete, or both, the PCS assessment and develop or review, or both, the written plan of care annually. Oversight provided by the RN must include all of the following: (7-1-16)

i. Development of the written PCS plan of care; (7-1-13)

ii. Review of the treatment given by the personal assistant through a review of the student's PCS service detail reports as maintained by the provider; and (7-1-16)

iii. Reevaluation of the plan of care as necessary, but at least annually. (7-1-13)

c. The RN must conduct supervisory visits on a quarterly basis, or more frequently as determined by the IEP team and defined as part of the PCS plan of care. (7-1-16)

07. Physical Therapy and Evaluation. For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

08. Psychological Evaluation. A psychological evaluation must be provided by a: (7-1-13)

a. Licensed psychiatrist; (7-1-13)

b. Licensed physician; (7-1-13)

c. Licensed psychologist; (7-1-13)

d. Psychologist extender registered with the Bureau of Occupational Licenses; or (7-1-13)

e. Endorsed or certified school psychologist. (7-1-16)

09. Psychotherapy. Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials: (7-1-13)

a. Psychiatrist, M.D.; (7-1-13)

b. Physician, M.D.; (7-1-13)

c. Licensed psychologist; (7-1-13)

d. Licensed clinical social worker; (7-1-13)

e. Licensed clinical professional counselor; (7-1-13)

f. Licensed marriage and family therapist; (7-1-13)

g. Certified psychiatric nurse (R.N.), as described in Subsection 707.13 of these rules; (7-1-13)

h. Licensed professional counselor whose provision of psychotherapy is supervised in compliance with IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; (7-1-13)

i. Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; (7-1-13)

j. Licensed associate marriage and family therapist whose provision of psychotherapy is supervised as described in IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and

Family Therapists”; or (7-1-13)

k. Psychologist extender, registered with the Bureau of Occupational Licenses, whose provision of diagnostic services is supervised in compliance with IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners.” (7-1-13)

10. Community Based Rehabilitation Services (CBRS). CBRS providers must be one of the following: (7-1-16)

a. Licensed physician, licensed practitioner of the healing arts; (7-1-16)

b. Advanced practice registered nurse; (7-1-16)

c. Licensed psychologist; (7-1-13)

d. Licensed clinical professional counselor or professional counselor; (7-1-13)

e. Licensed marriage and family therapist; (7-1-16)

f. Licensed masters social worker, licensed clinical social worker, or licensed social worker; (7-1-13)

g. Psychologist extender registered with the Bureau of Occupational Licenses; (7-1-13)

h. Licensed registered nurse (RN); (7-1-13)

i. Licensed occupational therapist; (7-1-13)

j. Endorsed or certified school psychologist; (7-1-16)

k. Community Based Rehabilitation Services specialist. A CBRS specialist is: (7-1-16)

i. An individual who has a Bachelor’s degree and holds a current PRA credential; or (3-20-14)

ii. An individual who has a Bachelor’s degree or higher and was hired on or after November 1, 2010, to work as a CBRS specialist to deliver Medicaid-reimbursable mental health services. This individual may continue to do so for a period not to exceed thirty (30) months from the initial date of hire. The individual must show documentation that they are working towards this certification. In order to continue as a CBRS specialist beyond a total period of thirty (30) months from the date of hire, the worker must have completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom he works in accordance with the requirements set by the PRA. (7-1-16)

iii. Credential required for CBRS specialists. (7-1-16)

(1) Applicants who intend to work primarily with adults, age eighteen (18) or older, must become a Certified Psychiatric Rehabilitation Practitioner in accordance with the PRA requirements. (3-20-14)

(a) Applicants must be under the supervision of a licensed behavioral health professional, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis. (7-1-16)

(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on-site supervision. (7-1-16)

(2) Applicants who work primarily with adults, but also intend to work with participants under the age of eighteen (18), must have training addressing children’s developmental milestones, or have evidence of classroom hours in equivalent courses. The worker’s supervisor must determine the scope and amount of training the worker

needs in order to work competently with children assigned to the worker's caseload. (3-20-14)

(a) Applicants must be under the supervision of a licensed behavioral health professional staff, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis. (7-1-16)

(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on-site supervision. (7-1-16)

(3) Applicants who intend to work primarily with children under the age of eighteen (18) must obtain a certificate in children's psychiatric rehabilitation in accordance with the PRA requirements. (3-20-14)

(4) Applicants who primarily work with children, but who also intend to work with participants eighteen (18) years of age or older, must have training or have evidence of classroom hours addressing adult issues in psychiatric rehabilitation. The worker's supervisor must determine the scope and amount of training the worker needs in order to competently work with adults assigned to the worker's caseload. (3-20-14)

11. Speech/Audiological Therapy and Evaluation. For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

12. Social History and Evaluation. Social history and evaluation must be provided by a licensed registered nurse (RN), psychologist, M.D, school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. (7-1-13)

13. Transportation. Transportation must be provided by an individual who has a current Idaho driver's license and is covered under vehicle liability insurance that covers passengers for business use. (7-1-13)

14. Therapy Paraprofessionals. The schools may use paraprofessionals to provide occupational therapy, physical therapy, and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be delegated and supervised by a professional therapist as defined by the appropriate licensure and certification rules. The portions of the treatment plan that can be delegated to the paraprofessional must be identified in the IEP or transitional IFSP. (7-1-16)

a. Occupational Therapy (OT). Refer to IDAPA 24.06.01, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants," for qualifications, supervision, and service requirements. (7-1-16)

b. Physical Therapy (PT). Refer to IDAPA 24.13.01, "Rules Governing the Physical Therapy Licensure Board," for qualifications, supervision and service requirements. (7-1-16)

c. Speech-Language Pathology (SLP). Refer to IDAPA 24.23.01, "Rule of the Speech and Hearing Services Licensure Board," and the American Speech-Language-Hearing Association (ASHA) guidelines for qualifications, supervision and service requirements for speech-language pathology. The guidelines have been incorporated by reference in Section 004 of these rules. (7-1-16)

i. Supervision must be provided by an SLP professional as defined in Section 734 of this chapter of rules. (7-1-16)

ii. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the SLP service. (7-1-16)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1810

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

These rule changes were prompted by upcoming changes in federal regulations specific to third-party liability. This rule change will remove the prenatal exemption language from the third-party liability rules to align with changes in the Balanced Budget Act of 2018.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 219 through 221](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 or any other funds for this rule change. The proposed rule changes within this docket are required for federal compliance. This is part of Medicaid's normal daily operations and are typically conducted through its contract with its claims processing vendor as a routine business practice without requiring any additional federal or state funding.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cindy Brock at (208) 364-1983.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 56-202(b), Idaho Code.

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

PUBLIC HEARING
Tuesday, October 23, 2018 - 10:30 a.m. (MDT)
Department of Health & Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East and D-West Boise, ID 83705
TELECONFERENCE CALL-IN
Call in number: 1-240-454-0879 Meeting access code: 805 638 537 Meeting password: 4jsvE7p8 (45783778 from phones)

The hearing site 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:

These rule changes were prompted by upcoming changes in federal regulations specific to third-party liability. This rule change will remove the prenatal exemption language from the third-party liability rules to align with changes in the Balanced Budget Act of 2018.

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 negative 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 or any other funds for this rule change. The proposed rule changes within this docket are required for federal compliance. This is part of Medicaid's normal daily operations and are typically conducted through its contract with its claims processing vendor as a routine business practice without requiring any additional federal or state funding.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are required for compliance with federal laws.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cindy Brock at (208) 364-1983.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1810

215. THIRD PARTY LIABILITY.

01. Determining Liability of Third Parties. The Department will take reasonable measures to determine any legal liability of third parties for medical care and services rendered to a participant. (3-30-07)

02. Third Party Liability as a Current Resource. The Department is to treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time. (3-30-07)

03. Withholding Payment. The Department must not withhold payment on behalf of a participant because of the liability of a third party when such liability, or the amount thereof, cannot be currently established or is not currently available to pay the participant's medical expense. (3-30-07)

04. Seeking Third Party Reimbursement. The Department will seek reimbursement from a third party when the party's liability is established after reimbursement to the provider is made, and in any other case in which the liability of a third party existed, but was not treated as a current resource, with the exceptions provided in Subsection 215.05 of this rule. (3-25-16)

a. The Department will seek reimbursement from a participant when a participant's liability is established after reimbursement to the provider is made; and (3-30-07)

b. In any other situation in which the participant has received direct payment from any third party resource and has not forwarded the money to the Department for services or items received. (3-30-07)

05. Billing Third Parties First. Medicaid providers must bill all other sources of direct third party payment, with the following exceptions: (3-25-16)

a. When the resource is a court-ordered absent parent and there are no other viable resources available, the claims will be paid and the resources billed by the Department; (3-25-16)

b. ~~Prenatal or p~~Preventive pediatric care including early and periodic screening and diagnosis. Screening and diagnosis program services include: (3-25-16)()

i. Regularly scheduled examinations and evaluations of the general physical, dental, and mental health, growth, development, and nutritional status of children under age twenty-one (21), provided according to guidance for child wellness exams published in the Medicaid General Provider and Participant Handbook; (3-25-16)

ii. Immunizations recommended by the American Academy of Pediatrics immunization schedule; (3-25-16)

iii. Diagnosis services to identify the nature of an illness or other problem by examination of the symptoms. (3-25-16)

c. When prior authorization has been approved according to Section 883 of these rules, treatment services to control, correct, or ameliorate health problems found through diagnosis and screenings; (3-25-16)

d. If the claim is for ~~prenatal or~~ preventative pediatric care as described in Subsection 215.05.b of this rule, the Department will make payment for the service provided in its fee schedule and will seek reimbursement from the third party according to 42 U.S.C. 1396a(a)(25)(E). ~~(3-25-16)~~ ()

06. Accident Determination. When the participant's Medicaid card indicates private insurance and/or when the diagnosis indicates an accident for which private insurance is often carried, the claim will be suspended or denied until it can be determined that there is no other source of payment. (3-30-07)

07. Third Party Payments. The Department will pay the provider the lowest amount of the following: (3-29-12)

a. The provider's actual charge for the service; or (3-29-12)

b. The maximum allowable charge for the service as established by the Department in its pricing file. If the service or item does not have a specific price on file, the provider must submit supporting documentation to the Department. Reimbursement will be based on the documentation; or (3-29-12)

c. The third party-allowed amount minus the third party payment, or the patient liability as indicated by the third party. (3-29-12)

08. Subrogation of Third Party Liability. In all cases where the Department will be required to pay medical expenses for a participant and that participant is entitled to recover any or all such medical expenses from any third party, the Department will be subrogated to the rights of the participant to the extent of the amount of medical assistance benefits paid by the Department as the result of the occurrence giving rise to the claim against the third party. (3-30-07)

a. If litigation or a settlement in such a claim is pursued by the medical assistance participant, the participant must notify the Department. (3-30-07)

b. If the participant recovers funds, either by settlement or judgment, from such a third party, the participant must repay the amount of benefits paid by the Department on his behalf. (3-30-07)

09. Subrogation of Legal Fees. (3-30-07)

a. If a medical assistance participant incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the Department is subrogated, the amount which the Department is entitled to recover, or any lesser amount which the Department may agree to accept in compromise of its claim, will be reduced by an amount which bears the same relation to the total amount of attorney fees and court costs actually paid by the participant as the amount actually recovered by the Department, exclusive of the reduction for attorney fees and court costs, bears to the total amount paid by the third party to the participant. (3-30-07)

b. If a settlement or judgment is received by the participant which does not specify portion of the settlement or judgment which is for payment of medical expenses, it will be presumed that the settlement or judgment applies first to the medical expenses incurred by the participant in an amount equal to the expenditure for benefits paid by the Department as a result of the payment or payments to the participant. (3-30-07)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code; also House Bill 260 (2011), now codified as Sections 56-260 through 56-266, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Idaho House Bill 260 (2011) included legislative direction for the Department to develop a plan for Medicaid managed care for high-cost populations, including dual eligibles. Idaho Medicaid has offered a voluntary, integrated Medicare-Medicaid Coordinated Plan (MMCP) to Idaho's dual eligibles since 2014. With the addition of another health plan to the market, dual eligibles will have two health plans to select from for the MMCP.

This rule change will allow for Medicaid to enroll those dual eligible participants who have not elected to enroll in the coordinated MMCP into a mandatory Medicaid Managed Long-Term Services and Supports (MLTSS) product, which will administer and coordinate Medicaid benefits. The Centers for Medicare and Medicaid Services (CMS) has authorized Idaho Medicaid to develop a mandatory enrollment structure under Section 1915(b) of the Social Security Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 1, 2018, Idaho Administrative Bulletin, **Vol. 18-8, pages 89 through 92.**

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The anticipated fiscal impact is limited to the cost of system changes, which is currently projected at \$411,000, based on the high-level design estimate from the Department's Medicaid Management Information Systems (MMIS) vendor, Molina Medicaid Solutions. Centers for Medicare and Medicaid Services (CMS) has approved an Advance Planning Document (APD) requesting federal financial participation (FFP) to offset the costs of these automation changes. The approved enhanced federal financial participation rate is 90% and the remaining 10% will be utilized from state general funds, meaning \$370,000 federal monies and \$41,000 state general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ali Fernández at (208) 287-1179.

Dated this 4th day of October, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 Sections 56-202(b) and 56-264, Idaho Code; also House Bill 260 (2011), now codified as Sections 56-260 through 56-266, Idaho Code.

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

PUBLIC HEARING Tuesday, August 14, 2018 1:30 p.m. (MDT)	PUBLIC HEARING Wednesday, August 15, 2018 1:00 p.m. (MDT)	PUBLIC HEARING Thursday, August 16, 2018 9:00 a.m. (PDT)
Medicaid Central Office 3232 Elder Street Conf. Rooms D East & West Boise, ID 83705	DHW Region 6 Office 150 Shoup Avenue 2nd Floor Large Conf. Room Idaho Falls, ID 83402	DHW Region 2 Office 1118 F Street 3rd Floor Conf. Room Lewiston, ID 83501

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:

Idaho House Bill 260 (2011) included legislative direction for the Department to develop a plan for Medicaid managed care for high-cost populations, including dual eligibles. Idaho Medicaid has offered a voluntary, integrated Medicare-Medicaid Coordinated Plan (MMCP) to Idaho's dual eligibles since 2014. With the addition of another health plan to the market, dual eligibles will have two health plans to select from for the MMCP.

This rule change is needed to allow Medicaid to enroll those dual eligibles who have not elected to enroll in the coordinated MMCP into a Medicaid Managed Long-Term Services and Supports program, which will administer and coordinate Medicaid benefits. (NOTE: Medicaid will concurrently seek 1915(b) Waiver authority from the Centers for Medicare and Medicaid Services (CMS) to develop a mandatory enrollment structure.)

This rule change adds a new section of rules to this chapter that includes language pertaining to Idaho's existing managed care structures (behavioral health benefits and dental benefits, respectively). The new section will also indicate that dual eligibles (except for Tribal members and other populations exempt under federal requirements) will be mandatorily enrolled into a Medicaid Managed Long-Term Services and Supports plan that will administer and coordinate their Medicaid benefits in counties where there are two or more participating health plans. Participants will have an election period during which they can select the plan of their choice. Individuals that have not selected a plan by a specified deadline will be randomly assigned to one plan or the other by the Division of Medicaid.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to confer a benefit to the public.

This temporary rule will provide for phased-in mandatory enrollment into a Medicaid managed care service delivery system for individuals with Medicare Parts A and B and Enhanced Medicaid ("dual eligibles") in counties

where there are two or more participating health plans. Managed care for dual eligibles provides an improved system of service delivery over Medicaid fee-for-service.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The anticipated fiscal impact is limited to the cost of system changes, which is currently projected at \$930,000, based on the high-level design estimate from the Department's Medicaid Management Information Systems (MMIS) vendor, Molina Medicaid Solutions. Medicaid is currently working to submit an Advance Planning Document (APD) to CMS to request federal financial participation (FFP) to offset the costs of these automation changes. If approved, the enhanced federal financial participation rate is 90% and the remaining 10% would be utilized from state general funds, meaning \$837,000 federal monies and \$93,000 state general fund.

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 May 2, 2018, Idaho Administrative Bulletin, [Vol. 18-5, pages 67 and 68](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ali Fernández at (208) 287-1179.

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 Wednesday, August 22, 2018.

DATED this 29th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1801

076. ~~089.~~ ~~(RESERVED)~~ MANAGED CARE FOR DUALS: DEFINITIONS.

For the purposes of the managed care service delivery system for dual eligible beneficiaries described in Sections 076 through 079 of these rules, the following definitions apply: ()

01. Dual Eligible. A participant who is eligible for medical assistance under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." The participant's Medicaid eligibility must not be based solely on the requirements found under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," Section 802, "Women Diagnosed With Breast or Cervical Cancer." In addition, the participant must be eligible for and enrolled in both Medicare Part A and Medicare Part B, and must not have Medicare eligibility due to End-Stage Renal Disease (ESRD). ()

02. Health Plan. A health insurance company responsible for administering Medicaid benefits to dual eligible participants under a provider agreement with the Department. ()

03. Idaho Medicaid Plus. A managed care program designed to administer Medicaid benefits for dual eligible participants administered under a provider agreement between the Department and participating health plans.

()

04. Medicare/Medicaid Coordinated Plan. A managed care program as defined in IDAPA 16.03.17, “Medicare/Medicaid Coordinated Plan Benefits.” ()

05. Passive Enrollment. An enrollment process in which a participant is assigned to a participating health plan in a managed care service delivery structure unless the participant actively opts out of the enrollment process. ()

077. MANAGED CARE FOR DUALS: PROGRAM AUTHORITY AND IMPLEMENTATION.

01. Program Authority. Idaho Medicaid Plus is a managed care program for dual eligible participants administered with approval from the Centers for Medicare and Medicaid Services (CMS). The Idaho Medicaid Plus program allows for a health plan to administer Medicaid benefits to dual eligible participants. ()

02. Implementation. Idaho Medicaid Plus will be implemented using a phased-in approach. ()

a. Idaho Medicaid Plus will be implemented in a pilot county upon approval from CMS and after the Department determines that participating health plans have passed a readiness review for implementation. ()

b. Implementation in additional counties will occur in a phased-in manner upon successful implementation in the pilot county as determined by the Department. Phased-in implementation in any and all additional counties will be subject to Department approval. ()

c. Participating health plans must meet established performance benchmarks prior to Idaho Medicaid Plus implementation in each successive geographic service area. ()

078. MANAGED CARE FOR DUALS: PARTICIPANT ELIGIBILITY AND ENROLLMENT.

Idaho Medicaid Plus will be made available to dual eligible participants over age twenty-one (21) who reside in a county with at least one (1) participating health plan. ()

01. Excluded Populations. Idaho Medicaid Plus is not available to the following populations: ()

a. Dual eligible participants that have elected to enroll in the Medicare Medicaid Coordinated Plan as defined in IDAPA 16.03.17, “Medicare Medicaid Coordinated Plan Benefits.” ()

b. Individuals who have Medicare eligibility related to End-Stage Renal Disease. ()

c. Individuals enrolled in the Adult Developmental Disabilities 1915(c) waiver program as defined in Section 702 of these rules. ()

02. Optional Populations. Tribal members and pregnant women who are dual eligible participants can elect to voluntarily enroll in Idaho Medicaid Plus if it is available in their county of residence. These participants retain the right to disenroll from Idaho Medicaid Plus at any time. ()

03. Mandatory Enrollment. Dual eligible participants that are not members of an excluded population and reside in a county with two (2) or more participating health plans must select a health plan to administer their Idaho Medicaid Plus program. Mandatory enrollment procedures will occur in accordance with 42 CFR 438 Subpart B. ()

04. Passive Enrollment. Dual eligible participants that are not members of an excluded population and reside in a county with only one (1) participating health plan will be enrolled into that health plan to administer their Idaho Medicaid Plus program unless they opt out by contacting the Department using the instructions on the enrollment notice. These dual eligible participants may opt out of Idaho Medicaid Plus at any time. ()

079. MANAGED CARE FOR DUALS: COVERED SERVICES.

01. Coverage and Limitations. ()

a. Idaho Medicaid Plus covered services include Medicaid benefits as described in this chapter and IDAPA 16.03.09, "Medicaid Basic Plan Benefits." ()

b. Services for adults with developmental disabilities as described in Sections 511, 580, and 703 of these rules are excluded from Idaho Medicaid Plus. ()

c. Services administered under the managed care or brokerage contracts as described in Section 080 of these rules, and IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Sections 870 through 872 are excluded from Idaho Medicaid Plus. ()

02. Provider Reimbursement. Idaho Medicaid Plus participating health plans are required to reimburse network providers, at minimum, the established Medicaid fee schedule rates published on the Medicaid provider webpage and developed in accordance with Idaho Code and Department rule. ()

080. -- 089. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1802

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2019. The pending rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-264, and 56-1610, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule:

The Idaho Home Choice Program, operating through Money Follows the Person (MFP) Demonstration Grant, authorized through Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and Section 2403 of the 2010 Patient Protection and Affordable Care Act (P.L. 111-148), is scheduled to end September 30, 2020. To sustain the grant benefits, modifications to IDAPA and the 1915(c) Home and Community Based Services (HCBS) Waivers is necessary.

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice and includes changes made to the pending rule. The text of the pending rule has been modified in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 133-155](#).

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as it confers a benefit to the public.

This program provides support to move participants who are living in institutional settings like nursing facilities to live in community settings. Fully utilizing Transition Management and Transition Services will have an initial one-time cost of a maximum of \$5,481.92 per person.

However, transitioning these folks to community settings, authorized under the Aged and Disabled and Adult Developmental Disabilities Waivers, will generate an overall monthly ongoing cost savings of \$4,327.10 per participant. The Department anticipates that approximately 100 individuals will transition from institutional settings to community settings during state fiscal year 2020. Based on this estimate, it is anticipated that the overall savings would be \$432,709.99 (\$125,585.42 SGF and \$307,124.57 Federal funds).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This program provides support to move participants who are living in institutional settings like nursing facilities to live in community settings. Fully utilizing Transition Management and Transition Services will have an initial one-time cost of a maximum of \$5,481.92 per person.

However, transitioning these folks to community settings, authorized under the Aged and Disabled and Adult Developmental Disabilities Waivers, will generate an overall monthly ongoing cost savings of \$4,327.10 per participant. The Department anticipates that approximately 100 individuals will transition from institutional settings to community settings during state fiscal year 2020. Based on this estimate, it is anticipated that the overall savings would be \$432,709.99 (\$125,585.42 SGF and \$307,124.57 Federal funds).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending and temporary rule, contact Katie Davis, (208) 364-1933.

Dated this 14th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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(b), 56-264, and 56-1610, Idaho Code.

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

Tuesday, September 11, 2018 1:00 pm (PDT)	Tuesday, September 11, 2018 2:00 pm (MDT)	Thursday, September 13, 2018 2:00 pm (MDT)
Lewiston State Office Bldg. 1118 F Street 3rd Floor Conf. Rm. Lewiston, ID 83501	Idaho Falls State Office Bldg. 150 Shoup Avenue 2nd Floor Large Conf. Rm. Idaho Falls, ID 83402	Medicaid Central Office 3232 Elder Street Conf. Rm. D West/East Boise, ID 83705

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 Idaho Home Choice Program, operating through Money Follows the Person (MFP) Demonstration Grant, authorized through Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and Section 2403 of the 2010 Patient Protection and Affordable Care Act (P.L. 111-148), is scheduled to end September 30, 2020. To sustain the grant benefits, modifications to IDAPA, and the 1915(c) Home-Community Based Services (HCBS) Waivers is necessary.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This program provides support to move participants who are living in institutional settings like nursing facilities to live in community settings. Fully utilizing Transition Management and Transition Services will have an initial one-time cost of a maximum of \$5,481.92 per person.

However, transitioning these folks to community settings, authorized under the Aged and Disabled and Adult Developmental Disabilities Waivers, will generate an overall monthly ongoing cost savings of \$4,327.10 per participant. The Department anticipates that approximately 100 individuals will transition from institutional settings to community settings during state fiscal year 2020. Based on this estimate, it is anticipated that the overall savings would be \$432,709.99 (\$125,585.42 SGF and \$307,124.57 Federal funds).

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 June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, pages 57-58](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Katie Davis, (208) 364-1933.

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 26, 2018.

Dated this 2nd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1802

326. AGED AND DISABLED WAIVER SERVICES: COVERAGE AND LIMITATIONS.

01. Adult Day Health. Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. (4-4-13)

02. Adult Residential Care Services. Adult residential care services consist of a range of services provided in a homelike, non-institutional setting that include residential care or assisted living facilities and certified family homes. Payment is not made for the cost of room and board, including the cost of building maintenance, upkeep and improvement. (4-4-13)

a. Adult residential care services consist of a range of services provided in a congregate setting licensed under IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," that include: (4-4-13)

- i. Medication assistance, to the extent permitted under State law; (4-4-13)
- ii. Assistance with activities of daily living; (3-19-07)
- iii. Meals, including special diets; (3-19-07)
- iv. Housekeeping; (3-19-07)
- v. Laundry; (3-19-07)
- vi. Transportation; (3-19-07)
- vii. Opportunities for socialization; (3-19-07)
- viii. Recreation; and (3-19-07)
- ix. Assistance with personal finances. (3-19-07)
- x. Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)

xi. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)

b. Adult residential care services also consist of a range of services provided in a setting licensed under IDAPA 16.03.19, "Rules Governing Certified Family Homes," that include: (4-4-13)

- i. Medication assistance, to the extent permitted under State law; (4-4-13)
- ii. Assistance with activities of daily living; (4-4-13)
- iii. Meals, including special diets; (4-4-13)
- iv. Housekeeping; (4-4-13)
- v. Laundry; (4-4-13)
- vi. Transportation; (4-4-13)
- vii. Recreation; and (4-4-13)
- viii. Assistance with personal finances. (4-4-13)
- ix. Administrative oversight must be provided for all services provided or available in this setting. (4-4-13)

x. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (4-4-13)

03. Specialized Medical Equipment and Supplies. (4-4-13)

a. Specialized medical equipment and supplies include: (4-4-13)

- i. Devices, controls, or appliances that enable a participant to increase his abilities to perform

activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)

ii. Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)

b. Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)

04. Non-Medical Transportation. Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)

a. Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)

b. Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge, or public transit providers will be utilized. (3-19-07)

05. Attendant Care. Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL). These services may include personal assistance and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional or the participant. Services are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (actually performing a task for the person) or cuing to prompt the participant to perform a task. (4-4-13)

06. Chore Services. Chore services include the following services when necessary to maintain the functional use of the home, or to provide a clean, sanitary, and safe environment: (4-4-13)

a. Intermittent assistance may include the following. (4-4-13)

i. Yard maintenance; (3-19-07)

ii. Minor home repair; (3-19-07)

iii. Heavy housework; (3-19-07)

iv. Sidewalk maintenance; and (3-19-07)

v. Trash removal to assist the participant to remain in the home. (4-4-13)

b. Chore activities may include the following: (3-19-07)

i. Washing windows; (3-19-07)

ii. Moving heavy furniture; (3-19-07)

iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)

iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)

v. Tacking down loose rugs and flooring. (3-19-07)

c. These services are only available when neither the participant, nor anyone else in the household is

capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them or is responsible for their provision. (4-4-13)

d. In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)

07. Companion Services. Companion services include non-medical care, supervision, and socialization provided to a functionally impaired adult. Companion services are in-home services to ensure the safety and well-being of a person who cannot be left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider, who may live with the participant, may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the participant. However, the primary responsibility is to provide companionship and be there in case they are needed. (4-4-13)

08. Consultation. Consultation services are services to a participant or family member. Services are provided by a Personal Assistance Agency to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self-reliance possible for the participant and the participant's family. Services include consulting with the participant and family to gain a better understanding of the special needs of the participant and the role of the caregiver. (4-4-13)

09. Home Delivered Meals. Home delivered meals are meals that are delivered to the participant's home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)

- a.** Rents or owns a home; (4-4-13)
- b.** Is alone for significant parts of the day; (4-4-13)
- c.** Has no caregiver for extended periods of time; and (4-4-13)
- d.** Is unable to prepare a meal without assistance. (4-4-13)

10. Homemaker Services. Homemaker services consist of performing for the participant, or assisting him with, or both, the following tasks: laundry, essential errands, meal preparation, and other routine housekeeping duties if there is no one else in the household capable of performing these tasks. (4-4-13)

11. Environmental Accessibility Adaptations. Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

a. The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

b. Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

c. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

12. Personal Emergency Response System (PERS). PERS is an electronic device that enables a

waiver participant to secure help in an emergency. The participant may also wear a portable “help” button to allow for mobility. The system is connected to the participant’s phone and programmed to signal a response center once a “help” button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

- a. Rent or own a home, or live with unpaid caregivers; (4-4-13)
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no caregiver for extended periods of time; and (4-4-13)
- d. Would otherwise require extensive, routine supervision. (3-19-07)

13. Respite Care. Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant’s residence, a certified family home, a developmental disabilities agency, a residential care or assisted living facility, or an adult day health facility. (4-4-13)

14. Skilled Nursing. Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a licensed registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. (4-4-13)

15. Habilitation. Habilitation services assist the participant to reside as independently as possible in the community, or maintain family unity. (4-4-13)

a. Residential habilitation. Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

i. Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)

ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)

iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, as well as following home safety, first aid, and emergency procedures; (3-30-07)

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)

v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; or (3-30-07)

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)

vii. Personal assistance services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the person or the person's primary caregiver(s) are unable to accomplish on his or her own behalf. Personal assistance activities include direct assistance with grooming, bathing, and eating, assistance with medications that are ordinarily self-administered, supervision, communication assistance, reporting changes in the waiver participant's condition and needs, household tasks essential to health care at home to include general cleaning of the home, laundry, meal planning and preparation, shopping, and correspondence. (4-4-13)

b. Day habilitation. Day habilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day habilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day habilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (4-4-13)

16. Supported Employment. Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

a. Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (4-4-13)

b. Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment program, payments that are passed through to beneficiaries of a supported employment program, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (4-4-13)

17. Transition Services. Transition services include goods and services that enable a participant residing in a nursing facility, hospital, IMD, or ICF/ID to transition to a community-based setting. A participant is eligible to receive transition services immediately following discharge from a qualified institution after residing within that institution for a minimum of forty-five (45) Medicaid-reimbursed days. ()

a. Qualified Institutions include the following: ()

i. Skilled, or Intermediate Care Facilities; ()

ii. Nursing Facility; ()

iii. Licensed Intermediate Care Facility for the Persons with Intellectual Disabilities (ICF/ID); ()

iv. Hospitals; and ()

v. Institutions for Mental Diseases (IMD). ()

b. Transition services may include the following goods and services: ()

i. Security deposits that are required to obtain a lease on an apartment or home; ()

- ii. Cost of essential household furnishings, including furniture, window coverings, food preparation items, and bed/bath linens; and ()
- iii. Set-up fees or deposits for utility or service access, including telephone, electricity, heating and water; ()
- iv. Services necessary for the individual's health and safety such as pest eradication and one-time cleaning prior to occupancy; ()
- v. Moving expenses; and ()
- vi. Activities to assess need, arrange for and procure transition services. ()
- c. Excluded goods and services. Transition services do not include ongoing expenses, real property, ongoing utility charges, décor, or diversion/recreational items such as televisions, DVDs, and computers. ()
- d. Service limitations. Transition services are limited to a total cost of two thousand dollars (\$2,000) per participant and can be accessed every two (2) years, contingent upon a qualifying transition from an institutional setting. Transition services are furnished only to the extent that the person is unable to meet such expense or when the support cannot be obtained from other sources. ()

(BREAK IN CONTINUITY OF SECTIONS)

329. AGED AND DISABLED WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.

Each provider must have a signed provider agreement with the Department for each of the services it provides.

(3-19-07)

01. Employment Status. Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)

02. Fiscal Intermediary Services. An agency that has responsibility for the following: (5-8-09)

a. To directly assure compliance with legal requirements related to employment of waiver service providers; (3-19-07)

b. To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves; (3-19-07)

c. To bill the Medicaid program for services approved and authorized by the Department; (3-19-07)

d. To collect any participant participation due; (3-19-07)

e. To pay personal assistants and other waiver service providers for service; (3-19-07)

f. To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; (3-19-07)

g. To assure that personal assistants providing services meet the standards and qualifications under in this rule; (5-8-09)

h. To maintain liability insurance coverage; (5-8-09)

i. To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public; (5-8-09)

j. To obtain such criminal background checks and health screens on new and existing employees of record and fact as required. (5-8-09)

03. Provider Qualifications. All providers of homemaker services, respite care, adult day health, transportation, chore services, companion services, attendant care, adult residential care, and home delivered meals must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's Aged and Disabled waiver as approved by CMS. (4-4-13)

a. A waiver provider cannot be a relative of any participant to whom the provider is supplying services. (3-19-07)

b. For the purposes of Section 329 of these rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)

c. Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

04. Quality Assurance. Providers of Aged and Disabled waiver services are responsible for ensuring that they provide quality services in compliance with applicable rules. (7-1-16)

a. The results of a quality assurance review conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. (7-1-16)

b. The provider must respond to the quality assurance review within forty-five (45) days after the results are received from the Department. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. (7-1-16)

c. The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with any term or provision of the provider agreement, or any applicable state or federal regulation. (7-1-16)

05. HCBS Setting Compliance. Providers of Aged and Disabled waiver services are responsible for ensuring that they meet the person-centered planning and setting quality requirements described in Sections 311 through 318 of these rules, as applicable, and must comply with associated Department quality assurance activities. (7-1-16)

06. Specialized Medical Equipment and Supplies. Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)

07. Skilled Nursing Service. Skilled nursing service providers must be licensed in Idaho as a licensed registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

08. Consultation Services. Consultation services must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. (4-4-13)

09. Adult Residential Care. Adult residential care providers will meet all applicable state laws and

regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," or IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

10. Home Delivered Meals. Providers of home delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)

a. Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)

b. Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)

c. Documentation is maintained demonstrating that the meals served are made from the highest USDA grade for each specific food served; (4-4-13)

d. The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments"; (4-4-13)

e. A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)

f. Either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule have been met. (4-4-13)

11. Personal Emergency Response Systems. Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory Standards, or equivalent standards. (4-4-13)

12. Adult Day Health. Providers of adult day health must meet the following requirements: (4-4-13)

a. Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (4-4-13)

b. Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (4-4-13)

c. Services provided in a residential adult living facility must be provided in a residential adult living facility that meets the standards identified in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

d. Adult day health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

e. Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (4-4-13)

f. Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)

g. All providers of adult day health services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

- 13. Non-Medical Transportation Services.** Providers of non-medical transportation services must: (4-4-13)
- a. Possess a valid driver’s license; (4-4-13)
 - b. Possess valid vehicle insurance; and (4-4-13)
 - c. Meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)
- 14. Attendant Care.** Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” All providers of attendant care must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)
- 15. Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” All providers of homemaker services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)
- 16. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)
- 17. Residential Habilitation Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a residential habilitation agency under IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies,” and supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)
- a. Direct service staff must meet the following minimum qualifications: (3-30-07)
 - i. Be at least eighteen (18) years of age; (3-30-07)
 - ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)
 - iii. Have current CPR and First Aid certifications; (3-30-07)
 - iv. Be free from communicable disease; (4-4-13)
 - v. Each staff person assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
 - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks;” (4-4-13)
 - vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)

b. The provider agency is responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the participant. (4-4-13)

c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (4-4-13)

- i. Purpose and philosophy of services; (3-30-07)
- ii. Service rules; (3-30-07)
- iii. Policies and procedures; (3-30-07)
- iv. Proper conduct in relating to waiver participants; (3-30-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)
- vi. Participant rights; (3-30-07)
- vii. Methods of supervising participants; (3-30-07)
- viii. Working with individuals with traumatic brain injuries; and (3-30-07)
- ix. Training specific to the needs of the participant. (3-30-07)

d. Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)

- i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
- ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
- iii. Feeding; (3-30-07)
- iv. Communication; (3-30-07)
- v. Mobility; (3-30-07)
- vi. Activities of daily living; (3-30-07)
- vii. Body mechanics and lifting techniques; (3-30-07)
- viii. Housekeeping techniques; and (3-30-07)
- ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)

e. The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (4-4-13)

18. Day Habilitation. Providers of day habilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day habilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

- 19. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
- a.** Have received care giving instructions in the needs of the person who will be provided the service; (4-4-13)
 - b.** Demonstrate the ability to provide services according to a plan of service; (4-4-13)
 - c.** Be free of communicable disease; and (4-4-13)
 - d.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

20. Supported Employment. Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meet State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Providers must also take a traumatic brain injury training course approved by the Department. (4-4-13)

- 21. Chore Services.** Providers of chore services must meet the following minimum qualifications: (4-4-13)
- a.** Be skilled in the type of service to be provided; and (4-4-13)
 - b.** Demonstrate the ability to provide services according to a plan of service. (4-4-13)
 - c.** Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)
 - d.** Meet, either by formal training or demonstrated competency, the training requirements in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

22. Transition Services. Transition managers as described in Section 350.01 of these rules are responsible for administering transition services. ()

(BREAK IN CONTINUITY OF SECTIONS)

331. -- 349. (RESERVED)

350. TRANSITION MANAGEMENT.

Transition management provides relocation assistance and intensive service coordination activities to assist nursing facility, hospital, IMD and ICF/ID residents to transition to community settings of their choice. Transition managers provide oversight and coordination activities for participants during a transitional period up to twelve (12) months following a return to the community. This provider type will function as a liaison between the participant, institutional or facility discharge staff, other individuals as designated by the participant and the Department to support a successful and sustainable transition to the community. A participant is eligible to receive transition management when planning to discharge from a qualifying institution after residing within that institution for a minimum of forty-five (45) Medicaid-reimbursed days. ()

01. Provider Qualifications. Transition managers must: ()

a. Satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; ()

b. Have documented successful completion of the Department approved Transition Manager training prior to providing any transition management and transition services; ()

c. Have a Bachelor's Degree in a human services field from a nationally accredited university or college; or three (3) years' supervised work experience with the population being served; and ()

d. Be employed with a provider type approved by the Department. ()

02. Service Description. Transition management includes the following activities: ()

a. A comprehensive assessment of health, social, and housing needs; ()

b. Development of housing options with each participant, including assistance with housing choices, applications, waitlist follow-up, roommate selection, and introductory visits; ()

c. Assistance with tasks necessary to accomplish a move from the institutional setting; ()

d. Securing Transition Services in accordance with Subsection 326.17 or Subsection 703.15 of these rules in order to make arrangements necessary to move, including: ()

i. Obtaining durable medical equipment, assistive technology, and medical supplies, if needed; ()

ii. Arranging for home modifications, if needed; ()

iii. Applying for public assistance, if needed; ()

iv. Arranging household preparations including scheduling moving and/or cleaning services, utility set-up, purchasing furniture, and household supplies, if needed; ()

e. Coordinating with others involved in plan development for the participant to ensure successful transition and establishment in a community setting; ()

f. Providing post-transition support, including assistance with problem solving, dependency and isolation concerns, consumer-directed services and supports, Medicaid Enhanced Plan Benefits when applicable, and community inclusion. ()

03. Service Limitations. Transition management is limited to seventy-two (72) hours per participant per qualifying transition. ()

351.-- 449. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

703. ADULT DD WAIVER SERVICES: COVERAGE AND LIMITATIONS.

01. Residential Habilitation. Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

a. Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

i. Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-19-07)

ii. Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

iii. Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (3-19-07)

iv. Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities that are merely diversional or recreational in nature); (3-19-07)

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (3-19-07)

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services that consist of reinforcing physical, occupational, speech and other therapeutic programs. (3-19-07)

b. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. (3-19-07)

c. Skills training to teach waiver participants, family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

02. Chore Services. Chore services include the following services when necessary to maintain the functional use of the home or to provide a clean, sanitary, and safe environment. (4-4-13)

a. Intermittent Assistance may include the following: (4-4-13)

i. Yard maintenance; (4-4-13)

ii. Minor home repair; (4-4-13)

iii. Heavy housework; (4-4-13)

iv. Sidewalk maintenance; and (4-4-13)

v. Trash removal to assist the participant to remain in the home. (4-4-13)

- b.** Chore activities may include the following: (4-4-13)
 - i. Washing windows; (4-4-13)
 - ii. Moving heavy furniture; (4-4-13)
 - iii. Shoveling snow to provide safe access inside and outside the home; (4-4-13)
 - iv. Chopping wood when wood is the participant's primary source of heat; and (4-4-13)
 - v. Tacking down loose rugs and flooring. (4-4-13)

c. These services are only available when neither the participant, nor anyone else in the household, is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them, or is responsible for their provision. (4-4-13)

d. In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)

03. Respite Care. Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant's residence, the private home of the respite provider, the community, a developmental disabilities agency, or an adult day health facility. (4-4-13)

04. Supported Employment. Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (4-4-13)

a. Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or the IDEA. (4-4-13)

b. Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that are not directly related to a waiver participant's supported employment program. (4-4-13)

05. Non-Medical Transportation. Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)

a. Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)

b. Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge or public transit providers will be utilized. (4-4-13)

06. Environmental Accessibility Adaptations. Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

a. The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

b. Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

c. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

07. Specialized Medical Equipment and Supplies. (4-4-13)

a. Specialized medical equipment and supplies include: (4-4-13)

i. Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)

ii. Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)

b. Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State Plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)

08. Personal Emergency Response System (PERS). PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

a. Rent or own a home, or live with unpaid caregivers; (4-4-13)

b. Are alone for significant parts of the day; (4-4-13)

c. Have no caregiver for extended periods of time; and (4-4-13)

d. Would otherwise require extensive, routine supervision. (4-4-13)

09. Home Delivered Meals. Home delivered meals are meals that are delivered to a participant's home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)

a. Rents or owns a home; (4-4-13)

b. Is alone for significant parts of the day; (4-4-13)

c. Has no caregiver for extended periods of time; and (4-4-13)

d. Is unable to prepare a meal without assistance. (4-4-13)

10. Skilled Nursing. Skilled nursing includes intermittent or continuous oversight, training, or skilled

care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a licensed registered nurse licensed to practice in Idaho. (4-4-13)

11. Behavior Consultation/Crisis Management. Behavior Consultation/Crisis Management services that provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

12. Adult Day Health. Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. Adult day health cannot exceed thirty (30) hours per week, either alone or in combination with developmental therapy and occupational therapy. (4-4-13)

13. Self-Directed Community Supports. Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, "Consumer Directed Services." (3-19-07)

14. Place of Service Delivery. Waiver services may be provided in home and community settings as described in Section 312 of these rules. Approved places of services include the participant's personal residence, a certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: (7-1-16)

- a. Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)
- b. Licensed Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID); and (3-19-07)
- c. Residential Care or Assisted Living Facility. (3-19-07)
- d. Additional limitations to specific services are listed under that service definition. (3-19-07)

15. Transition Services. Transition Services include goods and services that enable a participant residing in a nursing facility, hospital, IMD, or ICF/ID to transition to a community-based setting. A participant is eligible to receive transition services immediately following discharge from a qualified institution after residing within that institution for a minimum of forty-five (45) Medicaid-reimbursed days. ()

- a. Qualified Institutions include the following: ()
- i. Skilled, or Intermediate Care Facilities; ()
- ii. Nursing Facility; ()
- iii. Licensed Intermediate Care Facility for the Persons with Intellectual Disabilities (ICF/ID); ()
- iv. Hospitals; and ()
- v. Institutions for Mental Diseases (IMD). ()
- b. Transition services may include the following goods and services: ()

- i. Security deposits that are required to obtain a lease on an apartment or home: ()
- ii. Cost of essential household furnishings, including furniture, window coverings, food preparation items, and bed/bath linens; and ()
- iii. Set-up fees or deposits for utility or service access, including telephone, electricity, heating and water; ()
- iv. Services necessary for the individual's health and safety such as pest eradication and one-time cleaning prior to occupancy; ()
- v. Moving expenses; and ()
- vi. Activities to assess need, arrange for and procure transition services. ()
- c. Excluded goods and services. Transition services do not include ongoing expenses, real property, ongoing utility charges, décor, or diversion/recreational items such as televisions, DVDs, and computers. ()
- d. Service limitations. Transition services are limited to a total cost of two thousand dollars (\$2,000) per participant and can be accessed every two (2) years, contingent upon a qualifying transition from an institutional setting. Transition services are furnished only to the extent that the person is unable to meet such expense or when the support cannot be obtained from other sources. ()

(BREAK IN CONTINUITY OF SECTIONS)

705. ADULT DD WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-19-07)

01. Residential Habilitation -- Supported Living. When residential habilitation services are provided by an agency, the agency must be certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and must supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)

- a. Direct service staff must meet the following minimum qualifications: (3-19-07)
 - i. Be at least eighteen (18) years of age; (3-19-07)
 - ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)
 - iii. Have current CPR and First Aid certifications; (3-19-07)
 - iv. Be free from communicable disease; (4-4-13)
 - v. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (4-4-13)
 - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background

- Checks.” (4-2-08)
- vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. (3-19-07)
- b.** All skill training for agency direct service staff must be provided by a Qualified Intellectual Disabilities Professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)
- c.** Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-29-12)
- i. Purpose and philosophy of services; (3-19-07)
 - ii. Service rules; (3-19-07)
 - iii. Policies and procedures; (3-19-07)
 - iv. Proper conduct in relating to waiver participants; (3-19-07)
 - v. Handling of confidential and emergency situations that involve the waiver participant; (3-19-07)
 - vi. Participant rights; (3-19-07)
 - vii. Methods of supervising participants; (3-19-07)
 - viii. Working with individuals with developmental disabilities; and (3-19-07)
 - ix. Training specific to the needs of the participant. (3-19-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
- i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-19-07)
 - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-19-07)
 - iii. Feeding; (3-19-07)
 - iv. Communication; (3-19-07)
 - v. Mobility; (3-19-07)
 - vi. Activities of daily living; (3-19-07)
 - vii. Body mechanics and lifting techniques; (3-19-07)
 - viii. Housekeeping techniques; and (3-19-07)
 - ix. Maintenance of a clean, safe, and healthy environment. (3-19-07)
- e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (3-19-07)
- 02. Residential Habilitation -- Certified Family Home (CFH). (3-29-12)**
- a.** An individual who provides direct residential habilitation services in his own home must be

certified by the Department to operate a certified family home under IDAPA 16.03.19, “Rules Governing Certified Family Homes,” and must receive residential habilitation program coordination services provided through the Department, or its contractor, for the residential habilitation services he provides. (3-29-12)

b. CFH providers providing residential habilitation services as a DD Waiver provider must meet the following minimum qualifications: (3-29-12)

i. Be at least eighteen (18) years of age; (3-29-12)

ii. Be a high school graduate, have a GED, or demonstrate the ability to provide services according to a plan of service; (3-29-12)

iii. Have current CPR and First Aid certifications; (3-29-12)

iv. Be free from communicable disease; (4-4-13)

v. Each CFH provider of residential habilitation services assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. (3-29-12)

vi. CFH providers of residential habilitation services who provide direct care and services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks;” and (3-29-12)

vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. (3-29-12)

c. All skill training for CFH providers who are providing residential habilitation services must be provided through the Department or its contractor by qualified intellectual disabilities professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)

d. Prior to delivering residential habilitation services to a participant, the CFH provider must complete an orientation training in the following areas as provided by either the Department, or its contractor or both, and include the following areas: (3-29-12)

i. Purpose and philosophy of services; (3-29-12)

ii. Service rules; (3-29-12)

iii. Policies and procedures; (3-29-12)

iv. Proper conduct in relating to waiver participants; (3-29-12)

v. Handling of confidential and emergency situation that involve the waiver participant; (3-29-12)

vi. Participant rights; (3-29-12)

vii. Methods of supervising participants; (3-29-12)

viii. Working with individuals with developmental disabilities; and (3-29-12)

ix. Training specific to the needs of the participant. (3-29-12)

e. Additional training requirements for CFH providers providing residential habilitation waiver services must be completed by the CFH provider within six (6) months of certification date and include a minimum of the following: (3-29-12)

- i. Instructional Techniques: Methodologies for training in a systematic and effective manner; (3-29-12)
 - ii. Managing behaviors: techniques and strategies for teaching adaptive behaviors; (3-29-12)
 - iii. Feeding; (3-29-12)
 - iv. Communication; (3-29-12)
 - v. Mobility; (3-29-12)
 - vi. Activities of daily living; (3-29-12)
 - vii. Body mechanics and lifting techniques; (3-29-12)
 - viii. Housekeeping techniques; and (3-29-12)
 - ix. Maintenance of a clean, safe, and healthy environment. (3-29-12)
 - f. The Department or its contractor will be responsible for providing on-going training to the CFH provider of residential habilitation specific to the needs of the participant as needed. (3-29-12)
- 03. Chore Services.** Providers of chore services must meet the following minimum qualifications: (3-19-07)
- a. Be skilled in the type of service to be provided; and (3-19-07)
 - b. Demonstrate the ability to provide services according to a plan of service. (3-19-07)
 - c. Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 04. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
- a. Have received care giving instructions in the needs of the person who will be provided the service; (3-19-07)
 - b. Demonstrate the ability to provide services according to a plan of service; (4-4-13)
 - c. Be free of communicable disease; and (4-4-13)
 - d. Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 05. Supported Employment.** Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meets State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)
- 06. Non-Medical Transportation.** Providers of non-medical transportation services must: (4-4-13)
- a. Possess a valid driver's license; and (3-19-07)

- b. Possess valid vehicle insurance. (3-19-07)
- 07. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)
- 08. Specialized Medical Equipment and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design, and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)
- 09. Personal Emergency Response System.** Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory standards, or equivalent standards. (4-4-13)
- 10. Home Delivered Meals.** Providers of home-delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)
- a. Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)
- b. Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)
- c. A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)
- d. The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (4-4-13)
- 11. Skilled Nursing.** Skilled nursing service providers must be licensed in Idaho as a licensed registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)
- 12. Behavior Consultation or Crisis Management.** Behavior Consultation or Crisis Management Providers must meet the following: (3-19-07)
- a. Work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (4-4-13)
- b. Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (3-19-07)
- c. Be a licensed pharmacist; or (3-19-07)
- d. Be a Qualified Intellectual Disabilities Professional (QIDP). (3-19-07)
- e. Emergency back-up providers must meet the minimum residential habilitation provider qualifications described under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-19-07)
- f. Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

- 13. Adult Day Health.** Providers of adult day health must meet the following requirements: (4-4-13)
- a.** Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA)”; (4-4-13)
 - b.** Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, “Rules Governing Certified Family Homes”; (4-4-13)
 - c.** Adult day health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks”; (4-4-13)
 - d.** Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant’s primary residence. The adult day health provider must provide care and supervision appropriate to the participant’s needs as identified on the plan. (4-4-13)
 - e.** Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)
- 14. Service Supervision.** The plan of service that includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-19-07)
- 15. Transition Services.** Transition managers as described in Section 350.01 of these rules are responsible for administering transition services. ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1803

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rulemaking simplifies and streamlines the current ventilator and tracheostomy special rate process to allow for less administrative burden, and to allow rates to start on the day of admission and with no semi-annual renewals.

Specifically, the ventilator and tracheostomy rates are being adjusted to allow for a fixed add-on rate, incorporating supplies, nursing and CNA hours. The rates will be updated on a yearly basis to reflect the changing costs of supplies and the Weighted Average Hourly Rate (WAHR) for nursing and CNA hours. Ventilator and tracheostomy rates do not vary significantly in requested supplies and the amount of nursing and/or CNA hours. Providing a fixed rate will allow for facilities to submit a request for a ventilator or tracheostomy add-on rate for a participant that can be effective from the date of admission or when the rate is needed. It will enable providers to bill for the participant's entire length of stay without the need to submit documentation and renewal requests throughout the year. It will reduce the burden and risk for facilities and enhance the efficiency of Medicaid staff time.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 156-159](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact of this rulemaking is not expected to increase the Department's claims expenditures for special rates in nursing facilities. During state fiscal year (SFY) 2016, the Department paid \$2.4 million in claims (approximately \$1.68 million in federal funds and \$720,000 in state general funds) to provide special ventilator and tracheostomy care. The objective of a special rate for ventilator and tracheostomy care is to compile the costs of specialty supplies and additional nursing hours for this type of care. Historical data indicates that supplies and additional nursing hours have not varied significantly between participants or providers.

The Department proposes to implement fixed special rates based on the average of specialty supplies and additional nursing hours from the last fiscal year. Costs for supplies and nursing care have been and will remain subject to annual readjustment based on findings from the Weighted Average Hourly Rate (WAHR) survey and inflation adjustments for supplies.

Using the average of the historical rates is not expected to impact claims expenditures for the Department.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alex Childers-Scott at (208) 364-1891.

Dated this 17th day of November, 2018.

Tamara Prisock, DHW – Administrative Rules Unit
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

THE FOLLOWING NOTICE PUBLISHED WITH THE 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(b) and 56-264, Idaho Code.

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

Tuesday, September 11, 2018 1:30 p.m. - 2:30 p.m. MDT
Idaho Department of Health and Welfare Medicaid Central Office Conference Room D-East 3232 Elder Street Boise, ID 83705
WebEx INFORMATION
Meeting Number (access code): 806 492 649 Meeting Password: 5SdNeddP (if calling from phone for audio, 57363337)
Conference Call INFORMATION
Call In Only (not viewing meeting online): 1-240-454-0879 Call In Only Password: 57363337

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

Medicaid staff currently process special rates for participants receiving tracheostomy or ventilator care manually. A Nursing Facility (NF) must submit documentation before or on the date the special rate is to take effect. Most ventilator and tracheostomy rates are similar in supplies and staffing and an average rate could be used instead. This would reduce administrative burden and reduce NF risk of nonpayment due to late special rate requests, allowing NF to receive timely and ongoing add-on rates for these participants. Rules are needed to simplify and streamline the current ventilator and tracheostomy special rate process to allow for less administrative burden, and to allow rates to start on the day of admission and with no semi-annual renewals.

The ventilator and tracheostomy rates will be adjusted to allow for a fixed add-on rate, incorporating supplies, nursing and CNA hours. The rates will be updated on a yearly basis to reflect the changing costs of supplies and the Weighted Average Hourly Rate (WAHR) for nursing and CNA hours. Ventilator and tracheostomy rates do not vary significantly in requested supplies and the amount of nursing and/or CNA hours. Providing a fixed rate will allow for facilities to submit a request for a ventilator or tracheostomy add-on rate for a participant that can be effective from the date of admission or when the rate is needed. It will enable providers to bill for the participant's entire length of stay without the need to submit documentation and renewal requests throughout the year. It will reduce the burden and risk for facilities and enhance the efficiency of Medicaid staff time.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact of this rulemaking is not expected to increase the Department's claims expenditures for special rates in nursing facilities. During state fiscal year (SFY) 2016, the Department paid \$2.4 million in claims (approximately \$1.68 million in federal funds and \$720,000 in state general funds) to provide special ventilator and tracheostomy care. The objective of a special rate for ventilator and tracheostomy care is to compile the costs of specialty supplies and additional nursing hours for this type of care. Historical data indicates that supplies and additional nursing hours have not varied significantly between participants or providers.

The Department proposes to implement fixed special rates based on the average of specialty supplies and additional nursing hours from the last fiscal year. Costs for supplies and nursing care have been and will remain subject to annual readjustment based on findings from the Weighted Average Hourly Rate (WAHR) survey and inflation adjustments for supplies.

Using the average of the historical rates is not expected to impact claims expenditures for the Department.

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 June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 59 and 60](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Childers-Scott at (208) 364-1891.

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 Wednesday, September 26, 2018.

Dated this 2nd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1803

270. NURSING FACILITY: SPECIAL RATES.

A special rate consists of a facility's daily reimbursement rate for a patient plus an add-on amount. Section 56-117, Idaho Code, provides authority for the Department to pay facilities an amount in addition to the daily rate when a patient has needs that are beyond the scope of facility services and when the cost of providing for those additional needs is not adequately reflected in the rates calculated. This special rate add-on amount for such specialized care is in addition to any payments made in accordance with other provisions of this chapter and is excluded from the computation of payments or rates under other provisions in these rules. (4-4-13)

01. Determination. The Department determines to approve a special rate on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request must be based on an identified condition that will continue for a period greater than thirty (30) days. (3-4-11)

- 02. Effective Date.** Upon approval, a special rate is effective on the date the application was received. (3-4-11)
- 03. Reporting.** Costs equivalent to payments for special rate add-on amounts must be removed from the cost components subject to limits, and be reported separately by the provider. (3-19-07)
- 04. Limitation.** A special rate cannot exceed the provider's charges to other patients for similar services. (3-19-07)
- 05. Prospective Rate Treatment.** Prospective treatment of special rates became effective July 1, 2000. Subsections 270.06 and 270.07 of this rule provide clarification of how special rates are paid under the prospective payment system. (4-4-13)
- 06. Determination of Payment for Qualifying Residents.** Special rate add-on amounts are calculated using one (1) of the methods described in Subsections 270.06.a. through 270.06.c. of this rule. (4-4-13)
- a.** One Hundred Percent (100%) Special Care Facility Existing July 1, 2000. If on July 1, 2000, an entire facility was a special care unit that included Medicaid residents, the facility's direct care cost per diem will not be subject to the direct care cost limit. However, the direct care costs are case mix adjusted based on the ratio of the facility's Medicaid CMI for the rate period to the facility-wide CMI for the cost reporting period. (3-19-07)
- b.** Equipment and Non-Therapy Supplies. Equipment and non-therapy supplies not addressed in Section 225 of these rules as determined by the Department, are reimbursed in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 755, as an add-on amount. (4-4-13)
- c.** Ventilator Dependent Residents and Residents Receiving Tracheostomy Care. Nursing facilities providing care to residents who are ventilator-dependent or who receive tracheostomy care are eligible to submit requests for the fixed add-on amount, in addition to the facility's rate for residents receiving this type of care. Approved requests are effective the date the type of care is needed by the participant, or no earlier than sixty (60) days prior to the date the request is received by the Department. The rate includes the cost for equipment and supplies and for additional registered nurse and certified nursing assistant hours, as appropriate for each type of care. Costs for equipment and supplies will be adjusted annually for inflation, and registered nurse and certified nursing assistant costs will be adjusted according to the annual Weighted Average Hourly Rates (WAHR) survey results. ()
- i.** Approved add-on rates for ventilator-dependent residents and residents receiving tracheostomy care are subject to annual reviews by the Department to ensure that the add-on rate remains necessary for the type of care needed by the resident. ()
- ii.** The provider must inform the department if an approved add-on rate is no longer needed or if the resident requires a change from one type of care to another. ()
- ed.** Ventilator Dependent Residents and Residents Receiving Tracheostomy Care in Out-of-State Nursing Facilities. In the case of For residents who are ventilator-dependent and who or receive tracheostomy care in an out-of-state facility, the special add-on amount to the facility's rate for approved residents receiving this care, is determined by combining the following two (2) components is effective the date this type of care is needed by the participant or no earlier than sixty (60) days prior to the date the request is received by the Department. The add-on rate will include: (4-4-13)()
- i.** Calculation of a staffing add-on for the cost, if any, for additional direct care staff required in meeting the exceptional needs of these residents. The hourly add-on rate is equal to the current WAHR CNA or current WAHR RN wage rate plus a benefits allowance based on annual cost report data, then weighted to remove the CNA minimum daily staffing time adjusted for the appropriate skill level of care staff; and (4-4-13)
- ii.** Calculation of an add-on for equipment and non-therapy supplies following the provisions in Subsection 270.06.b. of this rule. (4-4-13)

07. Treatment of the Special Rate Cost for Future Rate Setting Periods. Special rates are established on a prospective basis similar to the overall facility rate. When the cost report used to set a prospective rate contains special rate costs, an adjustment is made to “offset,” or reduce costs by an amount equal to total incremental revenues, or add-on payments received by the provider during the cost reporting period. The amount received is calculated by multiplying the special rate add-on amount paid for each qualifying resident by the number of days that were paid. No related adjustment is made to the facility's CMIs. (4-4-13)

08. Special Rate for Providers that Change Ownership or Close. When a facility changes ownership or closes, a closing cost report is not required. Special rate payments made in the closing cost reporting period may be reviewed by the Department. (4-4-13)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1804

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Currently, IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits” specifies a list of covered organ transplants. As medical science has advanced, the procedures accepted as standard treatment have surpassed what rule allows. Section 56-255, Idaho Code, requires Medicaid to cover medically necessary services, and coverage has been approved under the allowance in IDAPA 16.03.09, “Medicaid Basic Plan Benefits” for coverage of investigational services for life-threatening medical conditions without other treatment options, or through Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) services for children under 21. This rulemaking aligns these rules with statute.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 160-162](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact of expanding lung organ transplants to include participants over the age of 21, and covering liver transplants from live donors would be cost neutral as current requests are paid under investigational services.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Deseron at (208) 287-1179.

Dated this 17th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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(b), Idaho Code.

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

PUBLIC HEARING
Monday, September 24, 2016 - 10:00 a.m. (MDT)
Department of Health & Welfare Medicaid Central Office 3232 Elder Street Conference Room D-West Boise, ID 83705
TELECONFERENCE CALL-IN
Toll Free: 1-877-820-7831 Participant Code: 701700

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:

Currently, IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" specifies a list of covered organ transplants. As medical science has advanced, the procedures accepted as standard treatment have surpassed what rule allows. Section 56-255, Idaho Code, requires Medicaid to cover medically necessary services, and coverage has been approved under the allowance in IDAPA 16.03.09, "Medicaid Basic Plan Benefits" for coverage of investigational services for life-threatening medical conditions without other treatment options, or through Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) services for children under 21. This rulemaking aligns these rules with statute.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact of expanding lung organ transplants to include participants over the age of 21, and covering liver transplants from live donors would be cost neutral as current requests are paid under investigational services.

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 June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 61 and 62](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact William Deseron at (208) 287-1179.

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 Wednesday, September 26, 2018.

Dated this 2nd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1804

SUB AREA: ENHANCED HOSPITAL SERVICES
(Sections 090 - 099)

090. ORGAN TRANSPLANTS.

The Department ~~may~~ **will** reimburse for organ transplant services ~~for bone marrows, kidneys, hearts, intestines, and livers as detailed in the Idaho Medicaid Provider Handbook,~~ when **medically necessary and** provided by hospitals approved by the Centers for Medicare and Medicaid for the Medicare program that have completed a provider agreement with the Department. ~~The Department may reimburse for cornea transplants for conditions where such transplants have demonstrated efficacy.~~ (3-19-07)()

091. -- 092. (RESERVED)

093. ORGAN TRANSPLANTS: COVERAGE AND LIMITATIONS.

01. ~~Kidney Transplants~~ **Coverage Limitations.** ~~Kidney transplant surgery~~ **No organ transplant** will be covered ~~only in a renal transplantation facility participating in the Medicare program after meeting the criteria specified in 42 CFR 405 Subpart U. Facilities performing kidney transplants must belong to one (1) of the End Stage Renal Dialysis (ESRD) network area's organizations designated by the Secretary of Health and Human Services for Medicare certification by the Medical Assistance Program unless prior authorized by the Department, or its designee.~~ **Coverage is limited to organ transplants performed for the treatment of medical conditions in accordance with evidence-based standards of care.** (3-19-07)()

02. **Living Kidney Donor Costs.** The transplant costs for actual or potential living ~~kidney~~ donors are fully covered by Medicaid and include all ~~reasonable~~ **medically necessary** preparatory, operation, and post-operation recovery expenses associated with the donation. Payments for post-operation expenses of a donor will be limited to the period of actual recovery. (3-19-07)()

~~03. **Intestinal Transplants.** Intestinal transplant surgery will be covered only for patients with irreversible intestinal failure, and who have failed total parenteral nutrition.~~ (3-19-07)

~~04. **Coverage Limitations.**~~ (3-19-07)

~~a. Multi-organ transplants may be covered when.~~ (3-19-07)

~~i. The primary organ defect caused damage to a second organ and transplant of the primary organ will eliminate the disease process; and~~ (3-19-07)

- ~~ii. The damage to the second organ will compromise the outcome of the transplant of the primary organ. (3-19-07)~~
- ~~b. Each kidney or lung is considered a single organ for transplant; (3-19-07)~~
- ~~c. Re-transplants will be covered only if the original transplant was performed for a covered condition and if the re-transplant is performed in a Medicare/Medicaid approved facility; (3-19-07)~~
- ~~d. A liver transplant from a live donor will not be covered by the Medical Assistance Program; (3-19-07)~~
- ~~e. No organ transplants covered by the Medical Assistance Program unless prior authorized by the Department, and performed for the treatment of medical conditions where such transplants have a demonstrated efficacy. (3-19-07)~~
- ~~05. **Follow Up Care.** Follow up care to a participant who received a covered organ transplant may be provided by a Medicare/Medicaid participating hospital not approved for organ transplantation. (3-19-07)~~

094. -- 095. (RESERVED)

096. ORGAN TRANSPLANTS: PROVIDER REIMBURSEMENT.

Organ transplant, ~~and~~ procurement services, and follow-up care by facilities ~~approved for kidneys, bone marrow, liver, or heart~~ will be reimbursed ~~the lesser of ninety-six and a half percent (96.5%) of reasonable costs under Medicare payment principles or customary charges~~ as specified in the provider agreement. ~~Follow-up care provided to an organ transplant patient by a provider not approved for organ transplants will be reimbursed at the provider's normal reimbursement rates.~~ Reimbursement ~~to Independent O~~ for organ Procedure Agencies and ~~Independent H~~istocompatibility ~~L~~aboratories tests will ~~not~~ be covered made to the facility performing the transplant. (3-19-07)()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1805

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is December 5, 2018. This pending rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202, 56-264, and 56-1610, Idaho Code, and Titles XIX and XXI of the Social Security Act and Title 56, Chapter 1, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Idaho Medicaid was directed during the 2018 session of the Idaho Legislature by passage of House Bill 465 to implement comprehensive dental benefits to all Idaho Medicaid participants. Clarifying language has been added to the Pending and Temporary rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule as previously adopted while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions made to the pending rule. Only the sections that differ from the proposed rule text are printed in this Bulletin. The original text of the temporary and proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 113-119](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is an expected increase in General Fund expenditures of \$3.8 million. Medicaid will leverage the current Federal matching rate for the Idaho Medicaid program in addition to the anticipated future offset to the general fund of \$2.5 million from a reduction in emergency dental costs and treatment costs for other medical conditions complicated by lack of access to oral health care for these Medicaid participants. The system changes needed for this project are minimal and can be incorporated into existing operations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Cindy Brock, (208) 364-1983.

Dated this 14th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 Sections 56-202, 56-264, and 56-1610, Idaho Code, and Titles XIX and XXI of the Social Security Act and Title 56, Chapter 1, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 18, 2018.

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:

Idaho Medicaid was directed during the 2018 session of the Idaho Legislature by passage of House Bill 465 to implement comprehensive dental benefits to all Idaho Medicaid participants.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: (a) it is necessary to protect the public health, safety, or welfare; and (c), conferring a benefit.

HB465 was passed during the 2018 legislative session to confer full dental benefits to adults on the Basic Medicaid benefit plan who had previously been limited to palliative and emergency care. This rule change will expand dental benefits to these participants to include the full range of dental benefits available under the Idaho Medicaid program.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is an expected increase in General Fund expenditures of \$3.8 million. Medicaid will leverage the current Federal matching rate for the Idaho Medicaid program in addition to the anticipated future offset to the general fund of \$2.5 million from a reduction in emergency dental costs and treatment costs for other medical conditions complicated by lack of access to oral health care for these Medicaid participants. The system changes needed for this project are minimal and can be incorporated into existing operations.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because per legislative direction, the effective date for these benefits is July 1, 2018. To meet this time frame, these rules are being submitted as Temporary rules in this Bulletin.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cindy Brock, (208) 364-1983.

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 Wednesday, July 25, 2018.

DATED this 5th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

Italicized red text that is *double underscored* indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1805

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-19-07)

02. Scope. These rules establish the Medicaid Enhanced Plan Benefits covered under Title XIX and Title XXI. Participants who are eligible for Enhanced Plan Benefits are also eligible for benefits under IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” *Dental services for the Medicaid Enhanced Plan are covered under Sections 080 through 087 of these rules. ~~Dental benefits and~~ outpatient behavioral health benefits are contained in IDAPA 16.03.09. “Medicaid Basic Plan Benefits.”* (4-11-15)()

03. Scope of Reimbursement System Audits. These rules also provide for the audit of providers’ claimed costs against these rules and Medicare standards. The Department reserves the right to audit financial and other records of the provider, and, when warranted, the records of entities related to the provider. Audits consist of the following types of records: (3-19-07)

- a.** Cost verification of actual costs for providing goods and services; (3-19-07)
- b.** Evaluation of provider’s compliance with the provider agreement, reporting form instructions, and any applicable law, rule, or regulation; (3-19-07)
- c.** Effectiveness of the service to achieve desired results or benefits; and (3-19-07)
- d.** Reimbursement rates or settlement calculated under this chapter. (3-19-07)

04. Exception to Scope for Audits and Investigations. Audits as described in these rules do not apply to the audit processes used in conducting investigations of fraud and abuse under IDAPA 16.05.07, “Investigation and Enforcement of Fraud, Abuse, and Misconduct.” (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

075. ENHANCED PLAN BENEFITS: COVERED SERVICES.

Individuals who are eligible for the Medicaid Enhanced Plan *Benefits* are *eligible for* enrolled in all benefits covered

under IDAPA 16.03.09, "Medicaid Basic Plan Benefits." In addition to those benefits, individuals in the enhanced plan are eligible for ~~the following~~ enhanced benefits as ~~provided for~~ described in this chapter of rules.

(4-11-15)()

~~01. **Dental Services.** Dental Services are provided as described under Sections 080 through 089 of these rules. (3-29-12)~~

~~02. **Enhanced Hospital Benefits.** Organ transplants are provided under the Enhanced Hospital services as described in Sections 090 through 099 of these rules. (3-19-07)~~

~~03. **Enhanced Outpatient Behavioral Health Benefits.** Enhanced Outpatient Behavioral Health services are described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-20-14)~~

~~04. **Enhanced Home Health Benefits.** Private Duty Nursing services are provided under the Enhanced Home Health as described in Sections 200-219 of these rules. (3-19-07)~~

~~05. **Therapies.** Physical, Speech, and Occupational Therapy Providers as described in Section 215 of these rules. (3-19-07)~~

~~06. **Long Term Care Services.** The following services are provided under the Long Term Care Services. (3-30-07)~~

~~a. Nursing Facility Services as described in Sections 220 through 299 of these rules. (3-19-07)~~

~~b. Personal Care Services as described in Sections 300 through 308 of these rules. (3-30-07)~~

~~c. A & D Waiver Services as described in Sections 320 through 330 of these rules. (3-30-07)~~

~~07. **Hospice.** Hospice services as described in Sections 450 through 459 of these rules. (3-19-07)~~

~~08. **Developmental Disabilities Services.** (3-19-07)~~

~~a. Children's Developmental Disability Services as described in Sections 520 through 528, 660 through 666, and 680 through 686 of these rules. (7-1-13)~~

~~b. Adult Developmental Disabilities Services as described in Sections 507 through 519, 645 through 657, and 700 through 706 of these rules. (7-1-16)~~

~~c. ICF/ID as described in Sections 580 through 649 of these rules. (3-19-07)~~

~~09. **Service Coordination Services.** Service coordination as described in 720 through 779 of these rules. (3-19-07)~~

~~10. **Breast and Cervical Cancer Program.** Breast and Cervical Cancer Program is described in Sections 780 through 800 of these rules. (3-19-07)~~

076. -- ~~078~~9. (RESERVED)

~~080. **DENTAL SERVICES: SELECTIVE CONTRACT FOR DENTAL COVERAGE.**~~

~~All participants who are eligible for Medicaid's Enhanced Plan dental benefits are covered under a selective contract for a dental insurance program called Idaho Smiles at <http://www.healthandwelfare.idaho.gov/Medical/Medicaid/MedicalCare/DentalServices/tabid/696/Default.aspx>. (3-29-12)~~

~~081. **DENTAL SERVICES: DEFINITIONS.**~~

~~For the purposes of dental services covered in Sections 080 through 087 of these rules, the following definitions apply: (3-29-12)~~

- ~~01. **Adult.** A person who is past the month of his twenty-first birthday. (3-29-12)~~
- ~~02. **Child.** A person from birth through the month of his twenty-first birthday. (3-29-12)~~
- ~~03. **Idaho Smiles.** A dental insurance program provided to eligible Medicaid participants through a selective contract between the Department and a dental insurance carrier. (3-29-12)~~
- ~~**082. DENTAL SERVICES: PARTICIPANT ELIGIBILITY.**
All children and adults participating in Medicaid's Enhanced Plan are eligible for Idaho Smiles dental benefits described in Section 083 of these rules. (4-11-15)~~
- ~~**083. DENTAL SERVICES: COVERAGE AND LIMITATIONS.**
Some covered dental services may require authorization from the Idaho Smiles contractor. (3-29-12)~~
- ~~01. **Dental Coverage for Children.** Children are covered for dental services that include: (3-29-12)~~
- ~~a. Medically necessary preventive and problem focused exams, diagnostic and restorative services, treatment for conditions of the gums and dental pulp, braces and other orthodontic treatments, dentures, crowns, and oral surgery; and (4-11-15)~~
- ~~b. Other dental services as required by the Early and Periodic Screening and Diagnostic Testing (EPSDT) guidelines specified in Section 1905(r) of the Social Security Act. (4-11-15)~~
- ~~02. **Children's Orthodontics Limitations.** Orthodontics are limited to children who meet the Enhanced Plan eligibility requirements, and the Idaho Medicaid Handicapping Malocclusion Index as evaluated by the state Medicaid dental consultant and the dental insurance contractor's dental consultant. The Malocclusion Index is found in Appendix A of these rules. (3-29-12)~~
- ~~03. **Dental Coverage for Adults.** Adults are covered for medically necessary preventive and problem-focused exams, diagnostic and restorative services, treatment for conditions of the gums and dental pulp, dentures, oral surgery, and adjunctive dental services within the limits of coverage established by the Department. (4-11-15)~~
- ~~04. **Benefit Limitations.** The dental insurance contractor may establish limitations and restrictions for benefits according to the terms of its contract with the Department. (3-29-12)~~
- ~~**084. DENTAL SERVICES: PROCEDURAL REQUIREMENTS.**
Providers must enroll in the Idaho Smiles network with the dental insurance contractor and meet both credentialing and quality assurance guidelines of the contractor. (3-29-12)~~
- ~~01. **Administer Idaho Smiles.** The contractor is responsible for administering the Idaho Smiles program, including but not limited to dental claims processing, payments to providers, customer service, eligibility verification, and data reporting. (3-29-12)~~
- ~~02. **Authorization.** The contractor is responsible for authorization of covered dental services that require authorization prior to claim payment. (3-29-12)~~
- ~~03. **Complaints and Appeals.** Complaints and appeals are handled through a process between Idaho Smiles and the Department that is in compliance with state and federal requirements. (3-29-12)~~
- ~~**085. DENTAL SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**
Providers are credentialed by the contractor to ensure they meet licensing requirements of the Idaho Board of Dentistry standards. Providers' duties are based on the contract requirements and are monitored and enforced by the contractor. (3-29-12)~~
- ~~**086. DENTAL SERVICES: PROVIDER REIMBURSEMENT.**
The Idaho Smiles administrator reimburses dental providers on a fee for service basis under a Department approved fee schedule. (3-29-12)~~

~~087. DENTAL SERVICES: QUALITY ASSURANCE.~~

~~Providers are subject to the contractor's Quality Assurance guidelines including monitoring for potential fraud, overutilization, or abuse of Medicaid. The contractor is required to share such potential cases with the Medicaid Fraud Unit as discovered. (3-29-12)~~

~~088.—089. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

624. ICF/ID: CAPPED COST.

Beginning October 1, 1996, this cost area includes all allowable costs except those specifically identified as property costs in Section 623 of these rules and exempt costs or excluded costs in Section 627 or 628 of these rules. This Section defines items and procedures to be followed in determining allowable and exempt costs and provides the procedures for extracting cost data from historical cost reports, applying a cost forecasting market basket to project cost forward, procedures to be followed to project costs forward, and procedures for computing the median of the range of costs and the ICF/ID cap. (3-19-07)

01. Costs Subject to the Cap. Items subject to the cap include all allowable costs except property costs identified in Section 623 of these rules and exempt costs or excluded costs identified in Section 627 or 628 of these rules. Property costs related to a home office are administrative costs, will not be reported as property costs, and are subject to the cap. (3-19-07)

02. Per Diem Costs. Costs to be included in this category will be divided by the total participant days for the facility for the cost reporting period to arrive at allowable per diem costs. If costs for services provided some or all non-Medicaid residents are not included in the total costs submitted, the provider must determine the costs and combine them with the submitted costs in order that a total per diem cost for that facility can be determined both for both the purposes of determining the ICF/ID cap and of computing final reimbursement. (3-19-07)

03. Cost Data to Determine the Cap. Cost data to be used to determine the cap for ICF/ID facilities will be taken from each provider's most recent final cost report available sixty (60) days before the beginning of the period for which the cap is being set. Cost reports are final when the final audit report is issued, or earlier if the Department informs the facility the report is final for rate setting purposes. The selected final cost report will be used to establish the facility's prospective reimbursement rate. However, the final cost reports covering a period of less than twelve (12) months will be included in the data for determining the cap at the option of the Department. (3-19-07)

04. Projection. Per diem allowable costs will be inflated forward using a cost forecasting market basket and forecasting indices according to the same table as used for free standing facilities. (3-19-07)

a. The projection method used in Section 624 of these rules to set the cap will also be used to set non property portions of the prospective rate that are not subject to the cap. (3-19-07)

b. Forecasting indices as developed by Data Resources, Incorporated, will be used unless they are unavailable. In such case, indices supplied by some other nationally recognized forecaster will be used. (3-19-07)

05. Costs That Can be Paid Directly by the Department to Non ICF/ID Providers. Costs that can be paid directly by the Department to non ICF/ID providers are excluded from the ICF/ID prospective rates and ICF/ID cap: (3-19-07)

a. Direct physician care costs. Physicians who provide these services must bill the Medicaid program directly using their own provider numbers. (3-19-07)

b. Costs of services covered under the Early and Periodic Screening Diagnosis and Treatment (EPSDT) portion of the Medicaid Program. Items such as eyeglasses and hearing aids are covered under IDAPA

16.03.09, "Medicaid Basic Plan Benefits." ~~Dental services provided to EPSDT participants who are under the age of twenty one (21) and who reside in an ICF/ID, are covered under Sections 080 through 085 of these rules.~~ The cost of these services is not includable as a part of ICF/ID costs. Reimbursement can be made to a professional providing these services through his billing the Medicaid Program on his own provider number. (5-8-09)()

c. Costs of services covered by other parts of the Medicaid Program. Examples of these items include legend drugs and ambulance transportation. These items must be billed to the Medicaid Program directly by the provider using his own provider number. (3-19-07)

06. Cost Projection. Allowable per diem costs will be projected forward from the midpoint of the Base Period to the midpoint of the Target Period. "Base Period" is defined as the last available final cost report period. "Target Period" is defined as the effective period of the prospective rate. Procedures for inflating these costs are as follows: (3-19-07)

a. The percentage change for each cost category in the market basket will be computed from the beginning to the end of the Base Period. These percentages will then be divided by two (2) and the resultant percentages will be used to project forward allowable per diem costs for each cost category from the midpoint to the end of the Base Period. (3-19-07)

b. The percentage change for each cost category in the market basket will be computed for the period from the end of the Base Period to the beginning of the Target Period. These percentages will then be used to project forward the allowable per diem costs for each cost category, as determined in Subsection 624.06.a. of these rules, from the end of the Base Period to the beginning of the Target Period. (3-19-07)

c. The percentage change for each cost category in the market basket will be computed for the beginning to the end of the Target Period. These percentages will then be divided by two (2) and the resultant percentages will be used to project forward the allowable per diem costs as determined in Subsection 624.06.b. of these rules from the beginning to the midpoint of the Target Period. (3-19-07)

07. Cost Ranking. Prior to October 1st of each year the Director will determine the that percent above the median that will assure aggregate payments to ICF/ID providers will approximate but not exceed amounts that would be incurred using Medicare cost principles of reimbursement. That percentage will apply to caps and rates set after September 30th of each year. Projected per diem costs as determined in this section and subject to the cap will be ranked from the highest to the lowest. The cap will be set at a percent of the bed-weighted median for each rate period. The initial cap will be set as of October 1, 1996. (3-19-07)

a. The median of the range will be computed based on the available data points being considered as the total population of data points. (3-19-07)

b. The cap for each ICF/ID facility with a fiscal year beginning October 1, 1996, will be computed prior to the beginning of that year. For those facilities with a fiscal year ending on a date other than September 30th, the first cap will be computed for the period beginning October 1, 1996, and ending on the fiscal year end date. (3-19-07)

c. Facilities with cost reports that transcend the period from October 1, 1996, through September 30, 1997, will be retrospectively settled using the previous reimbursement system for the period of the report up to September 30, 1996. There will not be a retrospective settlement on the portion of these cost reports attributed to October 1, 1996 through the end of the cost report period unless provisions of Section 626 of these rules apply. (3-19-07)

d. Cost reports for periods beginning on or after October 1, 1996, will not be subject to retrospective settlement except as required by other provisions of this chapter. (3-19-07)

e. A new cap and rate will be set on an annual basis for each facility the first of July every year. (3-19-07)

f. The cap and prospective rate will be determined and set on an annual basis for each facility July

first of every year and will not be changed by any subsequent events or information with the exception that if the computations were found to contain mathematical or clerical errors, these errors will be corrected and the cap will be adjusted using the corrected figures. (3-19-07)

g. Payment of costs subject to the cap will be limited to the cap unless the Department determines the exclusions found in Section 628 of these rules apply. (3-19-07)

h. A facility that commences to offer participant care services as an ICF/ID on or after October 1, 1996, will be subject to retrospective settlement until the first prospective rate is set. Such facility will be subject to the ICF/ID cap as determined in this chapter. The first prospective rate for this provider will be set by the Department based on quarterly cost statements and final cost reports submitted for periods following the first three (3) months of operation. This first prospective rate may be set after the beginning of the second fiscal year of the provider. For the second year the provider will be paid a rate to be settled retrospectively unless both the Department and the provider agree to a prospective rate or rates covering that fiscal period. (3-19-07)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1807

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b), 56-264, and 56-1610, Idaho Code, and Sections 1905(a), 1915(c), and 1915(i), of the Social Security Act (SSA).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

These rules are being amended to add the requirement for termination of enrollment when a participant no longer meets Home and Community Based Services (HCBS) eligibility criteria, as required in CMS guidance for state programs operating under the federal authority of Sections 1915(c) and 1915(i) of the Social Security Act.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 222 through 224](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is estimated to be cost-neutral with no fiscal impact to any state or federal funds. There is no estimate on the number of participants who will be impacted by this rule change as participants have the choice on whether to access services under the Sections 1915(c) and 1915(i) of the SSA.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Clay Lord at (208) 364-1979.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is October 4, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202(b), 56-264, and 56-1610, Idaho Code, and Sections 1905(a), 1915(c), and 1915(i), of the Social Security Act (SSA).

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

PUBLIC HEARING
Tuesday, October 16, 2018
9:30 a.m. (MDT)

Medicaid Central Office
3232 West Elder Street
Conference Room D-East
Boise, ID 83705

TELECONFERENCE CALL-IN
Toll Free: 1-877-820-7831
Participant Code: 701700

The hearing site 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:

These rules are being amended to add the requirement for termination of enrollment when a participant no longer meets Home and Community Based Services (HCBS) eligibility criteria, as required in Centers for Medicare and Medicaid Service (CMS) guidance for state programs operating under the federal authority of Sections 1915(c) and 1915(i) of the Social Security Act.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rule changes are necessary to align IDAPA 16.03.10 with federal requirements for terminating the enrollment of a participant who no longer meets requirements in Sections 1915(c) and 1915(i) of the SSA and Idaho's Medicaid State Plan. The Centers for Medicare and Medicaid Services approved the State Plan application contingent on the Department's assurance these rules would be amended at the earliest possible time.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is estimated to be cost-neutral with no fiscal impact to any state or federal funds. There is no estimate on the number of participants who will be impacted by this rule change as participants have the choice on whether to access services under the Sections 1915(c) and 1915(i) of the SSA. Administrative costs will be handled by the current staff.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules are being adopted as temporary with an effective date of October 4, 2018. They are being amended to meet federal requirements under Idaho’s approved Medicaid State Plan.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Clay Lord at (208) 364-1979.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

Italicized red text that is *double underscored* indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1807

310. HOME AND COMMUNITY BASED SERVICES.

Home and Community Based Services (HCBS) are those *long-term* services and supports that assist eligible participants to remain in their home and community. The federal authorities under 42 CFR 441.301, 42 CFR 441.710, and 42 CFR 441.725 require the state to deliver HCBS in accordance with the rules described in Sections 310 through 318² of these rules. HCBS include the following: *(7-1-16)()*

01. Children’s Developmental Disability Services. Children’s developmental disability services as defined in Sections 663 and 683 of these rules. (7-1-16)

02. Adult Developmental Disability Services. Adult developmental disability services as defined in Sections 645 through 659, 703, and 705 of these rules. (7-1-16)

03. Consumer-Directed Services. Consumer-directed services as defined in IDAPA 16.03.13, “Consumer-Directed Services.” (7-1-16)

04. Aged and Disabled Waiver Services. Aged and disabled waiver services as defined in Section 326 of these rules. (7-1-16)

05. Personal Care Services. Personal care services as defined in Section 303 of these rules. (7-1-16)

06. Services for Children with Serious Emotional Disturbance (SED). *SED services, as defined in*

Section 368 of these rules, for children ~~with serious emotional disturbance (SED)~~ who are ~~participants enrolled~~ in the Medicaid SED program in support of Youth Empowerment Services (YES) ~~Program as defined in Section 638 of these rules.~~ (3-28-18)()

(BREAK IN CONTINUITY OF SECTIONS)

319. ~~(RESERVED)~~ **HCBS -- TERMINATION OF PARTICIPANT ENROLLMENT.**

01. Federal and State Eligibility Requirements. To be enrolled in an HCBS waiver or State Plan option program as provided in 42 CFR 441 and Section 1915 of the Social Security Act, a participant must meet the following eligibility requirements that include: ()

- a. An independent assessment; ()
- b. A state-approved person-centered plan; ()
- c. At least an annual redetermination of eligibility; and ()
- d. Other state-established criteria for determining eligibility under the State Plan for medical assistance; ()

02. Failure to Meet Requirements. A participant who fails to meet any of the conditions of participation required by state established eligibility criteria is subject to termination of enrollment. ()

03. Conditions for Termination of Enrollment. The Department will terminate the enrollment of a participant who is enrolled in an HCBS waiver or State Plan option, or who has accessed Medicaid coverage through an HCBS waiver or State Plan option under any of the following conditions. The participant: ()

- a. Does not have an identified need for a waiver or State Plan option service; ()
- b. Elects not to use services offered under the HCBS waiver or State Plan option; ()
- c. Declines to engage in person-centered planning; ()
- d. Does not meet other HCBS requirements provided in Section 319.01 of this rule; or ()
- e. Is non-responsive to three or more contact attempts by the Department or its designee to engage the participant in fulfilling requirements; ()

04. Continuous Eligibility for Children Under Age Nineteen. Continuous health care assistance eligibility for children under age nineteen (19), as provided in IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," does not apply for a participant under the age of nineteen (19) who is enrolled in an HCBS waiver or State Plan option program or who has accessed Medicaid coverage through an HCBS waiver or State Plan option program. ()

(BREAK IN CONTINUITY OF SECTIONS)

645. **HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION.**

Home and community based services are provided through the HCBS State Plan option as allowed in Section 1915(i) of the Social Security Act for adults with developmental disabilities who do not meet the ICF/ID level of care. HCBS state plan option services must comply with Sections 310 through 318~~9~~, and Sections 647~~5~~ through 659~~7~~ of these rules. (7-1-16)()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.03.14 – RULES AND MINIMUM STANDARDS FOR HOSPITALS IN IDAHO
DOCKET NO. 16-0314-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to 39-1307, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This docket proposes changes to the “Rules and Minimum Standards for Hospitals in Idaho” related to the use of restraint and seclusion, including which licensed medical professionals are permitted to order restraints or seclusion. The Department is also proposing changes in this docket that will strengthen patient rights. Other changes to this chapter are being made to meet the formatting requirements in IDAPA 44.01.01, “Rules of the Administrative Rules Coordinator.”

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 163 through 184](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. Feedback from stakeholders indicate the rule changes will not result in additional costs to their operations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dennis Kelly at (208) 334-6626.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 39-1307, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

This docket proposes changes to the “Rules and Minimum Standards for Hospitals in Idaho” related to the use of restraint and seclusion, including which licensed medical professionals are permitted to order restraints or seclusion. The Department is also proposing changes in this docket that will strengthen patient rights. Other changes to this chapter are being made to meet the formatting requirements in IDAPA 44.01.01, “Rules of the Administrative Rules Coordinator.”

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no anticipated fiscal impact to state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. Feedback from stakeholders indicate the rule changes will not result in additional costs to their operations.

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 June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 63-64](#).

INCORPORATION BY REFERENCE: There are no materials being incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dennis Kelly at (208) 334-6626.

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 26, 2018.

Dated this 2nd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0314-1810

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department may have written statements that pertain to the interpretation of this chapter, or to the documentation of compliance with these rules. ()

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.

There are no documents incorporated by reference in this chapter of rules. ()

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. ()

a. The mailing address of the Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

b. The mailing address of the Division of Licensing and Certification, P.O. Box 83720, Boise, Idaho 83720-0009. ()

c. The e-mail address for Facility Standards is: fsb@dhw.idaho.gov. ()

03. Street Address. ()

a. The street address of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

b. The street address of the Division of Licensing and Certification is located at 3232 Elder Street, Boise, Idaho 83705. ()

04. Telephone. ()

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

b. The telephone number of the Division of Licensing and Certification, Bureau of Facility Standards is (208) 334-6626. ()

05. Internet Websites. ()

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

b. The Division of Licensing and Certification, Bureau of Facility Standards internet website is found at <http://www.facilitystandards.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 Department's business is subject to the restrictions in state or federal law, and must comply with 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 requests 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. ()

03. Public Availability of Survey Reports. The Department will post on the Division of Licensing and Certification's website, survey reports and findings of complaint investigations relating to a facility at <http://www.facilitystandards.idaho.gov>. ()

~~007.~~ -- **009. (RESERVED)**

00210. DEFINITIONS AND ABBREVIATIONS – A THROUGH M.

For the purposes of this chapter, the following terms and definitions apply.

01. Anesthesiologist. A physician who meets the requirements for certification by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology. (10-14-88)

02. Anesthetist. A person who is: (12-31-91)

a. A dentist who has successfully completed a three (3) year residency in anesthesiology approved by the American Medical Association. (10-14-88)

b. A physician whose competence in the practice of anesthesiology is approved by the medical staff, of the hospital in which he works. (10-14-88)

c. A licensed registered nurse who meets the requirements for certification (CRNA) by the Council on Certification of the American Association of Nurse Anesthetists. (10-14-88)

03. Approved Drugs and Biologicals. Only such drugs and biologicals as are: (10-14-88)

a. Included (or approved for inclusion) in the United States Pharmacopoeia, National Formulary, or United States Homoeopathic Pharmacopoeia. (10-14-88)

b. Approved by the pharmacy and therapeutics committee (or equivalent) of the hospital that approves such drugs and biologicals for use in the hospital. (10-14-88)

c. Those drugs approved by the State Title XIX Agency. (10-14-88)

04. Board. The Idaho State Board of Health and Welfare. (12-31-91)

~~05. **Chemical Restraint.** The use of drugs that prevents the patient from doing what he might do voluntarily on his own.~~ (10-14-88)

~~06. **Chief Executive Officer or Administrator.** The person appointed by the governing body to act in its behalf in the overall management of the hospital.~~ (10-14-88)

- ~~076.~~ **Clinical Privileges.** Permission to render patient care, granted by the hospital governing body on recommendation of the medical staff, within well defined limits based upon the applicant's professional license, experience, competence, and judgment. (10-14-88)
- ~~087.~~ **Dentist.** A person currently licensed by the state of Idaho to practice dentistry. (10-14-88)
- ~~098.~~ **Department.** The Department of Health and Welfare of the state of Idaho. (12-31-91)
- ~~109.~~ **Dietetic Service Supervisor.** A person who: (12-31-91)
- a. Is a ~~registered~~ **licensed** dietitian; or (~~10-14-88~~)()
- b. Is a graduate of a dietetic technician or dietetic assistant educational program class or correspondence school accredited by the Academy of Nutrition and Dietetics, formerly the American Dietetic Association; or (~~10-14-88~~)()
- c. Is a graduate of a state-approved education program that provides ninety (90) or more hours of classroom instruction in food service management and has at least three (3) months supervisory experience in a health care institution with consultation from a dietitian; or (10-14-88)
- d. Has training and experience in food service management in a military program equivalent in content to the requirements in Subsections ~~00210.109~~.b. or ~~00210.109~~.c. of this rule; or (~~12-31-91~~)()
- e. Has training and experience in food service management equivalent to requirements in Subsections ~~00210.109~~.b. or ~~00210.109~~.c. of this rule; or (~~12-31-91~~)()
- ~~110.~~ **Dietitian (~~Qualified Consultant~~).** A person who ~~meets the requirements of Title 54, Chapter 35, Idaho Code, and is licensed by the Board of Medicine as a licensed dietitian (LD).~~ (~~12-31-91~~)()
- ~~a. Meets the requirements for registration by the Commission on Dietetic Registration of the American Dietetic Association under its requirements in effect on March 9, 1976; or~~ (~~10-14-88~~)
- ~~b. Has a baccalaureate degree with major studies in food and nutrition or dietetics, has one (1) year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.~~ (~~10-14-88~~)
- ~~121.~~ **Director of Nursing Service.** A licensed registered nurse who is licensed by the state of Idaho, and has been so designated by the facility. (10-14-88)
- ~~132.~~ **Director of Psychiatric Nursing Service.** A licensed registered nurse licensed by the state of Idaho who has training and experience in psychiatric nursing and has been so designated by the facility. (10-14-88)
- ~~143.~~ **Drug Administration.** An act in which a single dose of a prescribed drug or biological is given to a patient by an authorized person in accordance with laws and regulations governing such acts. The complete act of administration entails the removal of an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying the drug and dosage with the practitioner's orders, administering dose to the proper patient, and immediately recording the time and amount given. (10-14-88)
- ~~154.~~ **Governmental Unit.** The state, any county, municipality, or other subdivision, department, division, board, or agency thereof. (10-14-88)
15. Grievance. A grievance is a formal or informal, written or verbal complaint that is made to the hospital by a patient, or the patient's representative, regarding the patient's care, alleged abuse or neglect, or issues related to the hospital's compliance with Idaho state licensure rules. ()
- 16. Hospital.** A facility that: (10-14-88)

- a. Is primarily engaged in providing, by or under the daily supervision of physicians; (10-14-88)
 - i. Concentrated medical and nursing care on a twenty-four (24) hour basis to inpatients experiencing acute illness; or (10-14-88)
 - ii. Diagnostic and therapeutic services for medical diagnosis and treatment, psychiatric diagnosis and treatment, and care of injured, disabled, or sick persons; or (10-14-88)
 - iii. Rehabilitation services for injured, disabled, or sick persons; or (10-14-88)
 - iv. Obstetrical care. (10-14-88)
 - b. Provides for care of two (2) or more individuals for twenty-four (24) or more consecutive hours. (10-14-88)
 - c. Is staffed to provide professional nursing care on a twenty-four (24) hour basis. (10-14-88)
 - d. Any hospital licensed under the provisions of these rules ~~shall~~ **must** be deemed a “facility” as defined at and for the purposes of Section 66-317(~~g~~7), Idaho Code. (~~12-11-91~~)()
- 17. Hospital Licensing Act.** The law referred to in Sections 39-1301 through 39-1314, Idaho Code, as amended. (10-14-88)
- 18. Hospital for the Treatment of Alcohol and Drug Abuse.** A facility for the diagnosis, care, and treatment of patients suffering from chronic alcoholism. (10-14-88)
- 19. Infectious Wastes.** Infectious wastes are defined as set out in Subsections ~~00210~~19.a. through ~~00210~~19.f. **of this rule.** Infectious wastes ~~shall~~ **must** be handled within specific rules as prescribed in ~~Subsection 550-06. of these rules.~~ Except as otherwise provided in these rules, infectious wastes ~~shall~~ **must** be handled and disposed of in accordance with the most current guidelines and recommendations of the Centers for Disease Control. (~~12-31-91~~)()
- a. Cultures and stocks of infectious agents and associated biologicals including: (1-13-90)
 - i. Specimens from medical and pathology laboratories. (1-13-90)
 - ii. Wastes from production of biologicals (by-products from the production of vaccines, reagents in the laboratory, etc.). (1-13-90)
 - iii. Cultures and stocks from clinical, research and industrial laboratories, such as disposable culture dishes and devices used to transfer, inoculate and mix cultures. (1-13-90)
 - b. Human blood and blood products (fluid form) and their containers, and liquid body wastes (fluid form) and their containers. (1-13-90)
 - c. Pathologic waste including tissue, organs, body parts, autopsy and biopsy materials, unless such waste has been treated with formaldehyde or other preservative agents. (1-13-90)
 - d. “Sharps” including needles, syringes, scalpel blades, pipettes, lancets or glass tubes that could be broken during handling. (1-13-90)
 - e. Animal carcasses that have been exposed to pathogens, their bedding and other waste from such animals. (1-13-90)
 - f. Items contaminated with blood or body fluids from patients known to be infected with diseases transmitted by body fluid contact. (1-13-90)

- 20. Licensed Independent Practitioner (L.I.P.).** A person who is: ()
- a.** A licensed physician or physician assistant under Section 54-1803, Idaho Code; or ()
- b.** A licensed advance practice registered nurse under Section 54-1402, Idaho Code. ()
- 201. Licensed Practical Nurse (L.P.N.).** A person currently licensed by the Idaho State Board of Nursing to practice as a licensed practical nurse. (10-14-88)
- 212. Licensee.** The person or entity to whom a license is issued. (10-14-88)
- 223. Licensing Agency.** The Idaho Department of Health and Welfare. (10-14-88)
- 234. Maternity Hospital.** A facility, the primary purpose of which is to provide services and facilities for obstetrical care. (10-14-88)
- ~~**24. Mechanical Restraint.** Any apparatus that physically prevents the patient from doing what he might voluntarily do on his own (this includes but is not limited to "safety belts"). Mechanical supports used in rehabilitative situations to achieve proper body position shall not be considered as restraints. (10-14-88)~~
- 25. Medical Record Practitioner (Qualified Consultant).** A person who: (12-31-91)
- a.** Meets the requirements for certification as a registered record administrator (RRA) or as an accredited record technician (ART) by the American Medical Record Association; or (10-14-88)
- b.** Is a graduate of a school of medical record science that is accredited jointly by the Council on Medical Education of the American Medical Association and the American Medical Record Association. (10-14-88)
- 26. Medical Staff Members.** Those licensed physicians, dentists, podiatrists and other professionals granted the privilege to practice in the hospital by the governing authority of a hospital. (10-14-88)
- 011. DEFINITIONS AND ABBREVIATIONS – N THROUGH Z.**
For the purposes of this chapter, the following terms and definitions apply. ()
- ~~**2701. New Construction or New Hospitals.** Includes the following: (12-31-91)~~
- a.** New buildings to be used as hospitals; and (10-14-88)
- b.** Additions to existing hospitals; and (10-14-88)
- c.** Conversion of existing buildings or portions thereof for use as a hospital; and (10-14-88)
- d.** Remodeling, alteration, addition or upgrading of a hospital or hospital building system that affects the structural integrity of the building, that changes functional operation, that affects fire safety or that adds beds, departments or services over those for which the hospital is currently licensed. (10-14-88)
- ~~**028. Nuclear Medicine Physician.** A physician who: (12-31-91)~~
- a.** Meets the requirements for certification by the American Board of Nuclear Medicine or the American Osteopathic Board of Nuclear Medicine; or (10-14-88)
- b.** Meets the requirement for certification by the American Board of Radiology, the American Board of Pathology, or the American Board of Internal Medicine, and whose competence in the practice of nuclear medicine is approved by the medical staff. (10-14-88)
- ~~**2903. Nursing Graduate.** A new graduate practicing on a temporary license must be provided direct supervision by a licensed registered nurse and may not assume charge responsibilities according to the rules of the~~

Idaho State Board of Nursing. (10-14-88)

304. Nurse Practitioner. A licensed registered nurse having specialized skill, knowledge and experience authorized, by rules and regulations jointly promulgated by the Idaho State Board of Medicine and the Idaho Board of Nursing and implemented by the Idaho Board of Nursing, to perform designated acts of medical diagnosis, prescription of medical, therapeutic and corrective measures and delivery of medications. (10-14-88)

3105. Nursing Unit. A separate and distinct service area constructed, equipped, and staffed to function independently of other nursing units and having its own related service facilities. (10-14-88)

3206. Occupational Therapist. A person who is licensed by the Idaho State Board of Medicine to practice occupational therapy. (10-14-88)

3307. Occupational Therapist Assistant. A person who: (12-31-91)

a. Is a graduate of an occupational therapy assistant educational program accredited by the American Occupational Therapy Association; or (10-14-88)

b. Meets the requirements for certification (COTA) by the American Occupational Therapy Association under its requirements in effect on the effective date of these rules. (10-14-88)

3408. Operating Room Technician. A person who: (12-31-91)

a. Has successfully completed a one (1) year education program for operating room technicians accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in cooperation with the Joint Review Committee on Education for the Operating Room Technician, or meets the requirements for certification (CST) by the Association of Surgical Technologists; or (10-14-88)

b. Is licensed as a practical (vocational) nurse in the state of Idaho and meets the training requirements of the Idaho State Board of Nursing. (10-14-88)

3509. Patient. Any individual admitted to a hospital for diagnosis, treatment, and/or care. (10-14-88)

3610. Person. Any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof. (10-14-88)

3711. Pharmacist. A person who is licensed by the state of Idaho and has training or experience in the specialized functions of institutional pharmacy, such as residences in hospital pharmacy, seminars in institutional pharmacy, and other related training programs. (10-14-88)

3812. Physiatrist. A physician licensed by the Idaho State Board of Medicine and who meets the requirements for certification by the American Board of Physical Medicine and Rehabilitation. (10-14-88)

139. Physical Therapist. A person who *is registered by the Idaho State Board of Medicine or otherwise certified or qualified to* meets all requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and engages in the practice of physical therapy in Idaho. (~~10-14-88~~)()

140. Physical Therapist Assistant. *A graduate of a two (2) year educational program accredited by the American Physical Therapy Association* A person who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. (~~10-14-88~~)()

415. Physician. A person currently licensed under the Idaho Medical Practice Act to practice medicine and surgery in the state of Idaho. (10-14-88)

4216. Physician's Assistant. A person employed by a physician who: (12-31-91)

- a. Is a graduate of an approved program; and (10-14-88)
- b. Is qualified by general education, training, experience and personal character; and (10-14-88)
- c. Has been authorized by the Hospital Board to render patient services under the direction of a supervising physician who is not required to be physically present on the premises when the physician's assistant is rendering patient services, unless so required by the Hospital Board. (10-14-88)
- ~~43~~**17. Podiatrist.** A person who is licensed by the state of Idaho and is a doctor of podiatric medicine (D.P.M.) or doctor of podiatry (D.P.). (10-14-88)
- ~~44~~**18. Provisional License.** A license issued to a hospital that is in substantial compliance with the regulations but that is temporarily unable to meet all of the requirements. A provisional license can be issued for a specified period of time, not to exceed six (6) months, while corrections are being completed. (10-14-88)
- ~~45~~**19. Psychiatric Hospital.** A facility for the diagnosis and treatment of persons with mental illness. (10-14-88)
- ~~46~~**20. Psychiatric Nurse.** A licensed registered nurse, licensed by the state of Idaho and qualified by training or experience in psychiatric nursing. (10-14-88)
- ~~47~~**21. Psychiatric Unit.** A specialized unit within a general hospital for the diagnosis and treatment of the mentally ill. (10-14-88)
- ~~48~~**22. Psychiatrist.** A physician who meets the requirements for certification in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry. (10-14-88)
- ~~49~~**23. Radiologic Service Director.** A person who: (12-31-91)
- a. Is a radiologist; or (10-14-88)
- b. Is a radiotherapist; or (10-14-88)
- c. In a geographic area where the services of a radiologist or radiotherapist are not available, is a physician who meets the requirements for certification in a medical specialty in which he has become qualified by experience and training in the use of radiographs, and whose competence in the practice of radiology is approved by the medical staff. (10-14-88)
- ~~50~~**24. Radiologic Technologist (Diagnostic).** A person who meets at least one (1) of the following criteria: (10-14-88)
- a. Is a graduate of a two (2) year education program for radiologic technologists accredited by the Council on Medical Education of the American Medical Association in cooperation with the Joint Review Committee on Education in Radiologic Technology; or (10-14-88)
- b. Meets the requirements for registration by the American Registry of Radiologic Technologists or by the American Registry of Clinical Radiography Technologists, and has one (1) year of experience as a radiologic technologist within the last three (3) years; or (10-14-88)
- c. Has successfully completed an educational program in radiologic technology in a military service, and has one (1) year of experience in radiologic technology within the last three (3) years; or (10-14-88)
- d. Has two (2) years of pertinent radiologic equipment experience within the last five (5) years, and has achieved a satisfactory grade on a proficiency examination in radiologic technology approved by the Secretary of Health and Human Services, except that such determination of proficiency will not apply with respect to persons initially licensed by a state or seeking initial qualification as a radiologic technologist after December 21, 1977.

(10-14-88)

~~524.~~ **Radiologist.** A physician who meets the requirements for certification by the American Board of Radiology or the American Osteopathic Board of Radiology. (10-14-88)

~~526.~~ **Radiotherapist.** A physician who: (12-31-91)

a. Meets the requirements for certification as a radiotherapist by the American Board of Radiology; or (10-14-88)

b. Meets the requirements for certification as a radiologist by the American Board of Radiology or the American Osteopathic Board of Radiology, and whose competence in the practice of radiation therapy is approved by the medical staff of the hospital in which he practices. (10-14-88)

~~527.~~ **Registered Nurse (R.N.).** A person licensed by the Idaho State Board of Nursing to practice professional nursing, also known as a licensed registered nurse. (10-14-88)

~~528.~~ **Rehabilitation Hospital.** A facility operated for the primary purpose of assisting with the rehabilitation of disabled persons through an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision. (10-14-88)

~~529.~~ **Respiratory Therapist.** A person who meets the requirements for registration by the American Registry of Respiratory Technicians (ARRT). (10-14-88)

~~530.~~ **Respiratory Therapy Technician.** A person who meets the requirements for certification as a Certified Respiratory Therapy Technician (CRTT) by the National Board for Respiratory Therapy. (10-14-88)

31. **Restraints.** A restraint is (1) any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely; or (2) a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition. ()

a. A restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm. ()

b. Side rails: Side rails are considered a restraint when they restrict the patient's freedom to exit the bed. Side rails may not be considered a restraint when they protect the patient. Examples include raising the side rails when a patient is: on a stretcher, recovering from anesthesia, sedated, experiencing involuntary movement, or on certain types of therapeutic beds. ()

c. Physically escorting a patient from one area to another against the patient's will is a restraint. ()

d. Physically holding a patient to administer a medication against the patient's will is a restraint. ()

e. Placing a patient in a chair or recliner that prevents him or her from getting out of the chair safely and easily, is a restraint. ()

f. Age or developmentally appropriate protective safety interventions (such as stroller safety belts, swing safety belts, high chair lap belts, and raised crib rails) that a safety-conscious child care provider outside a health care setting would utilize to protect an infant, toddler, or preschool-aged child would not be considered restraint or seclusion for the purposes of this rule. The use of these safety interventions needs to be addressed in the hospital's policies or procedures. ()

32. **Seclusion.** Seclusion is the involuntary confinement of a patient in a room or area, such as an

activity center, from which the patient is physically prevented from leaving. Physically prevented from leaving includes threats by staff, if the patient attempts to leave, including the threat of restraint or seclusion. Confinement on a locked unit or ward does not constitute seclusion. ()

~~57~~**33. Skilled Nursing Facility.** A facility whose design and function ~~shall~~ **must** provide area, space and equipment to meet the health needs of two (2) or more individuals who, at a minimum, require inpatient care and services for twenty-four (24) or more consecutive hours for unstable chronic health problems requiring daily professional nursing supervision and licensed nursing care on a twenty-four (24) hour basis, restorative, rehabilitative care, and assistance in meeting daily living needs. Medical supervision is necessary on a regular, but not daily basis. (10-14-88) ()

~~58~~**34. Social Worker.** An individual who is licensed by the state of Idaho to practice social work. (10-14-88)

~~59~~**35. Special Hospital.** A facility that provides primarily one (1) type of care. The specialized hospital must meet the applicable regulations for general hospitals. All medical and related health services in these facilities must be prescribed by or must be under the general direction of persons licensed to practice medicine in Idaho. (10-14-88)

~~60~~**36. Speech Pathologist or Audiologist.** A person who: (12-31-91)

a. Meets the current requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or (10-14-88)

b. Meets the educational requirements for certification, and is in the process of accumulating the supervised clinical experience required for certification. (10-14-88)

~~61~~**37. Substantial Compliance.** Substantial compliance means a facility is in substantial compliance with these rules when there are no deficiencies that would endanger the health, safety or welfare of residents. (10-14-88)

~~62~~**38. Supervision.** Authoritative procedural guidance by a qualified person for the accomplishment of a function within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function. Unless otherwise stated in the rules, the supervisor must be on the premises to perform supervisory duties. (10-14-88)

~~63~~**9. Temporary License.** A license issued for a period not to exceed six (6) months and issued initially upon application when the Department determines that all application information is acceptable. A temporary license allows the Department time to evaluate the Facility's on-going capability to provide services and to meet these rules. (10-14-88)

~~64~~**0. Tuberculosis Hospital.** A facility for the diagnosis and treatment of patients with tuberculosis or other pulmonary disease. (10-14-88)

41. Video Monitoring. Close observation of a person for the purpose of protecting them and/or gathering information. The observation is made from a distance by means of electronic equipment, such as closed-circuit television cameras. ()

42. Video and/or Audio Recording. Saving video and audio information on an electronic medium that can be viewed and/or listened to at a later time. ()

~~65~~**43. Waiver or Variance.** Waiver or variance means a waiver or variance to these rules and minimum standards in whole or in part that may be granted under the following conditions: (10-14-88)

a. Good cause is shown for such waiver and the health, welfare or safety of patients/residents will not be endangered by granting such a waiver; (10-14-88)

b. Precedent ~~shall~~ is not ~~be~~ set by granting of such waiver. The waiver may be renewed annually if sufficient written justification is presented to the licensing agency. ~~(10-14-88)~~ ()

~~00312.~~ -- 099. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

201. -- ~~2419.~~ (RESERVED)

220. PATIENT RIGHTS.

A hospital must protect and promote each patient's rights. Patient rights are provided for and described in Sections 220 through 234 of these rules. ()

01. Informed in Advance of Patient Care. A hospital must inform each patient, or when appropriate, the patient's representative or caregiver, of the patient's rights in advance of furnishing or discontinuing patient care whenever possible. ()

02. Identify Who Is Responsible for Medical Decisions. The hospital must identify who is responsible for making medical decisions and representing the patient if the patient is unable to make those decisions. ()

03. Specify Procedures to Inform Patient of Patient Rights. ()

a. The hospital must specify a procedure to inform patients, their representative, or caregiver of their rights before providing care. ()

b. In an emergency, rights may be provided after emergent care is provided. ()

c. The procedure must include a method to document that patients were informed of their rights or the reasons they were not informed before care was provided. ()

04. Informed in Format Understandable to Patient/Patient's Representative. The patient and/or the patient's representative has the right to be informed of the patient's rights in a language or format that the patient and/or legal representative understands. ()

05. Make Informed Decisions. The patient or patient's representative has the right to make informed decisions regarding patient's care. ()

06. Informed and Involved in Care Plan. The patient has the right to be informed of health status, be involved in care planning and treatment, and to request or refuse treatment. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate. ()

a. The hospital must obtain written consent for general treatment at the hospital. If the hospital is not able to obtain this consent, the reasons must be documented. ()

b. The hospital must obtain an informed written consent from each patient or the patient's representative for the provision of specific medical and/or surgical care, except in medical emergencies. The consent must include an explanation of risks, benefits, and alternatives for high-risk procedures, sedation, and other procedures or services as defined by the governing body. ()

07. Formulate Advance Directives. The patient has the right to formulate advance directives and to have hospital staff and practitioners who provide care in the hospital comply with these directives. The hospital must document whether the patient has an advance directive. If the patient has an advance directive, the hospital must document what it includes. If the patient does not have an advance directive, the hospital must offer the patient assistance to create one and document the patient's response. ()

08. Privacy. The patient has the right to meet privately with an attorney, a physician, a licensed independent practitioner, a representative of the state protection and advocacy group, and adult/child protection agency. ()

09. Personal Privacy. The patient has the right to personal privacy, including the right to privacy during all personal care, including hygiene activities such as bathing, dressing, and toileting. This right includes the right to treatment with dignity during personal care. ()

a. A patient's right to privacy may be limited in situations when a treatment team determines a person must be continuously observed to ensure his or her safety. A decision to continuously observe a patient, either in person or by video and audio monitoring, must be based on an individualized assessment of the patient's needs and it must be part of the patient's individualized plan of care. ()

b. When patients are video monitored, the hospital must turn the camera off or utilize an electronic privacy option during personal care and activities of daily living where the patient may be exposed, such as bathing, dressing, and toileting. Monitoring during these times must be done by staff members in person. Video and audio monitoring and recording must also be turned off during meetings with the patient and an attorney, a physician, a licensed independent practitioner, a representative of the state protection and advocacy group, and adult/child protection agency. ()

c. When the hospital utilizes the continuous observation of patients, and/or video recording of patients, it must develop policies and procedures to direct staff in these activities. ()

d. The hospital must obtain the patient's or patient's legal representative's written consent for video or audio recording except in common areas. ()

e. Video or audio recordings of a patient for any reason must be included as part of the patient's medical record except in common areas. ()

f. Monitors used for observing patients must not be visible or audible to unauthorized persons. ()

10. Video Monitoring of Common Areas. Closed circuit television may be used to monitor common areas when signs are clearly posted that video monitoring or video recording is occurring. Patient consent is not required for common areas. Video recordings of common areas are not part of the patient's medical record. ()

11. Safe Setting. The patient has the right to receive care in a safe setting. ()

12. Free From Abuse, Neglect, and Harassment. The patient has the right to be free from all forms of abuse, neglect, and harassment. If hospital staff become aware of potential abuse or neglect of a patient, the hospital must protect the patient from future harm and report the suspicions to the appropriate legal entity. ()

13. Confidentiality. The patient has the right to the confidentiality of his or her clinical records. ()

14. Access to Patient's Own Records. The patient has the right to access information contained in his or her clinical records within three business days. The patient may request clinical record information as a paper copy or in an electronic format. ()

a. The hospital may not charge the patient a rate for copies that is higher than that of the local library. ()

b. When the patient requests the information electronically, the hospital must provide it on a currently popular media storage device. The information must be provided in a coherent format. ()

15. State Agency Contact Information. The hospital must provide patients with contact information for the Idaho state survey agency, including the agency's physical and mailing addresses and telephone number.

()

221. -- 224. (RESERVED)

225. PATIENT GRIEVANCES.

The hospital must establish a clearly explained process for the prompt resolution of patient grievances. ()

01. Grievance by Patient or Patient's Representative. A patient's grievance is a formal or informal, written or verbal complaint that is made to the hospital by a patient, or the patient's representative, regarding the patient's care, alleged abuse or neglect, or issues related to the hospital's compliance with Idaho state licensure rules. When a complaint is resolved at the time of the complaint by staff present, it is not considered a grievance and does not require investigation. ()

02. Grievance Process. The grievance process must include: ()

a. The hospital must inform each patient how to submit a grievance. Grievances may be submitted to any professional staff member. ()

b. Grievances must be investigated. The grievance process must specify time frames for review of the grievance and the provision of a response. ()

c. The hospital must document the steps taken to investigate the grievance and the results of the grievance process. ()

03. Written Notice of Decision. The hospital must provide the patient with written notice of its decision that contains: ()

a. The name of the hospital contact person; ()

b. The steps taken to investigate the grievance; and ()

c. The results of the grievance process. ()

226. -- 228. (RESERVED)

229. LAW ENFORCEMENT RESTRAINTS.

The use of law enforcement restraint devices are not considered safe, appropriate health care restraint interventions for use by hospital staff to restrain patients. ()

01. Law Enforcement Use of Restraint Devices. The use of handcuffs, manacles, shackles, other chain-type restraint devices, or other restrictive devices applied by non-hospital employed or contracted law enforcement officials for custody, detention, and public safety reasons are not governed by these rules. ()

02. Law Enforcement Maintains Custody and Direct Supervision. When a law enforcement officer applies handcuffs, manacles, shackles, other chain-type restraint devices to a patient, the law enforcement officer must maintain custody and direct supervision of the prisoner who is the hospital's patient. ()

a. The law enforcement officer is responsible for the use, application, and monitoring of these restrictive restraint devices in accordance with state law. ()

b. The hospital is responsible for an appropriate patient assessment and the provision of safe, appropriate care to its patient who is in the custody of a law enforcement officer. ()

230. RESTRAINT AND SECLUSION.

The hospital must establish a clearly explained process for restraint and/or seclusion. The hospital must follow its restraint and seclusion policies. ()

01. Patient's Right to be Free From Restraint and Seclusion. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. ()

02. Use of Restraint or Seclusion. Restraint and/or seclusion may only be imposed to ensure the physical safety of the patient, a staff member, or others. Restraint and/or seclusion must be discontinued at the earliest possible time, when the patient no longer presents an immediate risk of harm to self or others. ()

03. Policy and Procedures. Restraint and seclusion policies and procedures must include: ()

a. Definitions for restraint and seclusion as defined in these rules. ()

b. Specification of: ()

i. Which personnel may assess patients to determine the need for restraint and/or seclusion; ()

ii. Which personnel may perform formal face-to-face evaluations for episodes of restraint and/or seclusion; and ()

iii. Which personnel may evaluate patients for the need to continue restraint and/or seclusion. ()

c. How patients will be assessed for the need for restraint and/or seclusion, including the types of restraint to be used and time frames for reassessment. ()

d. How patients will be monitored while in restraints and/or seclusion to ensure their well-being. ()

e. A requirement that restraint and/or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the patient, staff members, or others from harm. ()

f. A requirement that the type or technique of restraint used must be the least restrictive intervention that will be effective to protect the patient, staff members, or others from harm. ()

g. How services will be provided to patients while in restraint and/or seclusion, including time frames for general assessments, taking vital signs, offering fluids and nourishment, toileting/elimination, systematic release of restrained limbs to provide range of motion and exercise of those limbs, and other care as needed. ()

h. A requirement that specifies when restraint or seclusion is applied, the patient's plan of care is changed to direct staff on how to care for the patient while in restraint or seclusion and how to prevent further episodes. ()

i. The training requirements for staff who participate in the use of restraints and/or seclusion, including training requirements for persons who may order restraints and for persons who perform face-to-face examinations. Policies must address initial and ongoing training requirements. ()

j. A requirement that restraint or seclusion must be discontinued when the patient no longer presents an immediate risk of harm to themselves or others. ()

k. Documentation requirements for staff caring for patients in restraint and/or seclusion, including the documentation of assessments and behaviors following episodes of restraint or seclusion. ()

04. Investigation of Injuries. A procedure for the hospital to investigate injuries that occur during the application or use of restraint or seclusion. The investigation procedure must include recommendations for the prevention of future injuries from restraint or seclusion. ()

231. RESTRAINT AND SECLUSION ORDERS.

The use of restraint or seclusion must be in accordance with the order of a physician or other licensed independent

practitioner, who has been granted privileges by the governing body to order restraint and seclusion. ()

01. Orders. Orders for the use of restraint or seclusion must never be written as a standing order or on an as needed basis (PRN). ()

02. Attending Physician. The attending physician must be consulted as soon as practical if the attending physician did not order the restraint or seclusion. ()

03. Time Limits on Orders. Each order for restraint or seclusion used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others may only be renewed according to the following limits up to a total of twenty-four (24) hours: ()

a. Four (4) hours for adults eighteen (18) years of age or older; ()

b. Two (2) hours for children and adolescents nine (9) to seventeen (17) years of age; or ()

c. One (1) hour for children under nine (9) years of age. ()

d. The original restraint or seclusion order may only be renewed within the required time limits for up to a total of twenty-four (24) hours. After the original order expires, a physician or other licensed independent practitioner must see and assess the patient before issuing a new order. ()

e. Seclusion may only be ordered for the management of violent or self-destructive behavior. ()

f. Each order for restraint used to ensure the physical safety of a non-violent or non-self-destructive patient may be renewed as allowed by hospital policies. ()

g. Restraint or seclusion must be discontinued at the earliest possible time when the patient no longer presents an immediate risk of harm to self or others. The risk of harm must be assessed by a physician or licensed independent practitioner, or a registered nurse prior to releasing the patient. ()

232. RESTRAINT AND SECLUSION IMPLEMENTATION AND MONITORING.

The use of restraint or seclusion must be implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by hospital policy. ()

01. Written System. The hospital must adopt a written system for the use of restraints and seclusion, including techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion. ()

02. Observation of Patients Who Are Not Violent or Self-Destructive. Patients who are restrained but who are not violent or self-destructive, must be observed at intervals not greater than fifteen (15) minutes. ()

03. Management of Violent or Self-Destructive Behavior. Patients who are restrained or secluded for violent or self-destructive behaviors must be continuously observed by trained staff assigned to observe the patient. Staff must observe the patient either directly or using both video and audio equipment. Staff observing the patient must be physically close enough to protect the patient in an emergency. ()

04. Face-to-Face by Physician or Other Licensed Independent Practitioner. Patients who are restrained or secluded for the management of violent or self-destructive behavior, must be seen face-to-face within one (1) hour after the initiation of the intervention by a physician or other licensed independent practitioner or by a registered nurse who has been trained to conduct face-to-face examinations. The face-to-face examination must evaluate: ()

a. The patient's immediate situation; ()

b. The patient's reaction to the intervention; ()

c. The patient's medical and behavioral condition; and ()

d. The need to continue or terminate the restraint or seclusion. ()

e. When the face-to-face evaluation is conducted by a trained registered nurse, the trained registered nurse must consult the attending physician or other licensed independent practitioner who is responsible for the care of the patient, as soon as possible after the completion of the one (1) hour face-to-face evaluation. ()

233. RESTRAINT AND SECLUSION DOCUMENTATION.

The clinical record for each patient that is restrained or secluded must contain comprehensive documentation of the episode. ()

01. Patient's Behavior. A description of the patient's behavior that led to the use of restraint or seclusion. ()

02. Interventions Used Prior to Restraint or Seclusion. Alternatives or other less restrictive interventions attempted prior to the use of restraint or seclusion. ()

03. Type of Intervention. The type of interventions used, including the date and time the interventions were initiated. ()

04. Assessments. Initial and ongoing assessments of the need for restraint or seclusion by medical and nursing staff. ()

05. Patient's Response. The patient's response to the use of restraint or seclusion, including ongoing behaviors. ()

06. Monitoring Activities. Monitoring activities by staff. ()

07. Restraint and Seclusion Log. Each hospital must maintain a log of restraint and/or seclusion use that must include: ()

a. The name of the patient; ()

b. The type of restraints and/or seclusion used; ()

c. The date and time restraints and/or seclusion were applied and discontinued; and ()

d. Any injury or adverse consequence to the patient incurred during the restraint and/or seclusion. ()

234. RESTRAINT AND SECLUSION TRAINING.

All staff involved with the ordering, application, and monitoring of restraints and seclusion must be trained. ()

01. Training Requirements. Training must include an overview of the hospital's system for the use of restraints and seclusion, including techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion. Training must also include: ()

a. De-escalation techniques; ()

b. Use of least restrictive interventions; ()

c. The safe application of restraints; ()

d. Monitoring patients in restraint or seclusion; and ()

e. Providing care for a patient in restraint or seclusion. ()

02. Training Related to Job Responsibilities. All hospital staff members who participate in restraint or seclusion must be trained in relation to their job responsibilities. ()

03. Hospital's Policy Training. Physicians and licensed independent practitioners, who order restraints and seclusion and monitor those patients, must be trained in the hospital's policies for ordering restraints and seclusion and assessing patients who are restrained or secluded. ()

04. Ongoing Training. Staff must receive ongoing restraint and/or seclusion training in accordance with hospital policies. ()

235. -- 249. (RESERVED)

250. MEDICAL STAFF.

The hospital ~~shall~~ must have an active medical staff organized under bylaws approved by the governing body and responsible to the governing body for the quality of all medical care provided the patients, and for the professional practices and ethical conduct of the members. (10-14-88)()

01. Medical Staff Qualifications and Privileges. All medical staff members ~~shall~~ must be qualified legally and professionally for the privileges that they are granted. (10-14-88)()

a. Privileges ~~shall~~ must be granted only on the basis of individual training, competence, and experience. (10-14-88)()

b. The medical staff, with governing body approval, ~~shall~~ must develop and implement a written procedure for determining qualifications for medical staff appointment, and for determining privileges. (10-14-88)()

c. The governing body ~~shall~~ must approve medical staff privileges within the limits of the hospital's capabilities for providing qualified support staff and equipment in specialized areas. (10-14-88)()

02. Authority to Admit Patients. A hospital may grant to physicians, physician assistants, and advanced practice nurses the privilege to admit patients, provided that admitting privileges be granted only if the privileges are: ()

a. Recommended by the medical staff at the hospital; ()

b. Approved by the governing body of the hospital; and ()

c. Within the scope of practice conferred by the license of the physician, physician assistant, or advanced practice nurse. ()

d. A hospital must specify in its bylaws the process by which its governing body and medical staff oversee those practitioners granted admitting privileges. Such oversight must include credentialing and competency review. ()

023. Medical Staff Appointments and Reappointments. Medical staff appointments and reappointments ~~shall~~ must be made by the governing body upon the recommendation of the active medical staff, or a committee of the active staff. (10-14-88)()

a. Appointments to the medical staff ~~shall~~ must include a written delineation of all privileges including surgical procedures, and governing body approval ~~shall~~ must be documented. (10-14-88)()

b. Reappointments to the medical staff ~~shall~~ must be made at least every two (2) years with appropriate documentation indicating governing body approval. (10-14-88)()

c. Reappointment procedures ~~shall~~ **must** include a means of increasing or decreasing privileges after consideration of the member's physical and mental capabilities. ~~(10-14-88)~~()

d. The medical staff and administration with approval of the governing body ~~shall~~ **must** develop a written procedure for temporary or emergency medical staff privileges. ~~(10-14-88)~~()

034. Required Hospital Functions. Each hospital ~~shall~~ **must** have a mechanism in place to perform the following functions: ~~(10-14-88)~~()

- a. Coordinate all activities of the medical staff; ~~and~~ ~~(10-14-88)~~()
- b. Develop a hospital formulary and procedures for the choice and control of all drugs used in the hospital; ~~and~~ ~~(10-14-88)~~()
- c. Establish procedures to prevent and control infections in the hospital; ~~and~~ ~~(10-14-88)~~()
- d. Develop and monitor standards of medical records contents; ~~and~~ ~~(10-14-88)~~()
- e. Maintain communications between medical staff and the governing body of the hospital; and (10-14-88)
- f. Review clinical work of the medical staff. (10-14-88)

045. Documentary Evidence of Medical Staff Activities. The medical staff or any committees of the staff ~~shall~~ **must** meet as often as necessary, but at least twice annually, to assure implementation of the required functions in Subsection 250.034 of this rule. Minutes of all meetings of the medical staff or any committees of the staff ~~shall~~ **must** be maintained. ~~(12-31-91)~~()

056. Medical Staff Bylaws, Rules, and Regulations. These ~~shall~~ **must** specify at least the following: ~~(10-14-88)~~()

- a. A description of the medical staff organization that includes: (10-14-88)
 - i. Officers and their duties; ~~and~~ ~~(10-14-88)~~()
 - ii. Staff committees and their responsibilities; ~~and~~ ~~(10-14-88)~~()
 - iii. Frequency of staff and committee meetings; and (10-14-88)
 - iv. Agenda for all meetings and the type of records to be kept. (10-14-88)
- b. A statement of the necessary qualifications for appointment to the staff, and the duties and privileges of each category of medical staff. (10-14-88)
- c. A procedure for appointment, granting and withdrawal of privileges. (10-14-88)
- d. A mechanism for hearings and appeals of decisions regarding medical staff membership and privileges. (10-14-88)
- e. A statement regarding attendance at staff meetings. (10-14-88)
- f. A statement of qualifications and a procedure for delineation of clinical privileges for all categories of nonphysician practitioners. (10-14-88)
- g. A requirement for keeping accurate and complete medical records. (10-14-88)
- h. A requirement that all tissue surgically removed will be delivered to a pathologist for a report on

such specimens, unless the medical staff, in consultation with the pathologist, adopts uniform exceptions to sending tissue specimens to the laboratory for analysis. (10-14-88)

i. A statement requiring a medical history and physical examination be performed no more than seven (7) days before or within forty-eight (48) hours after admission. The findings from this history and physical examination, including a provisional diagnosis, must be included in the medical record prior to surgery, except in emergencies. (5-3-03)

j. A requirement that consultation is necessary with unusual cases, except in emergencies. Unusual cases ~~shall~~ **must** be defined by the hospital medical staff. (~~10-14-88~~)()

067. Review of Policies and Procedures. The medical staff ~~shall~~ **must** review and approve all policies and procedures directly related to medical care. (~~10-14-88~~)()

078. Dentists and Podiatrists. If dentists and podiatrists are appointed to the medical staff, the bylaws ~~shall~~ **must** specifically refer to services performed by such professionals, and ~~shall~~ **must** specify at least the following: (~~10-14-88~~)()

a. Patients admitted for dental or podiatry service ~~shall~~ **must** be under the general care of a physician member of the active staff. (~~10-14-88~~)()

b. All medical staff requirements and procedure for privileges ~~shall~~ **must** be followed for dentists and podiatrists. (~~10-14-88~~)()

089. Dating of Bylaws. Bylaws ~~shall~~ **must** be dated and signed by the current officers of the medical staff or the committee of the whole. (~~10-14-88~~)()

109. Medical Orders. Written, verbal and telephone orders from persons authorized to give medical orders under Idaho law ~~shall~~ **must** be accepted by those health care practitioners empowered to do so under Idaho law and written hospital policies and procedures. Verbal and telephone orders ~~shall~~ **must** contain the name of the person giving the order, the first initial and last name and professional designation of the health care practitioners receiving the order. The order(s) ~~shall~~ **must** be promptly signed or otherwise authenticated by the prescribing practitioner in a timely manner in accordance with the hospital's policy. (~~5-3-03~~)()

(BREAK IN CONTINUITY OF SECTIONS)

470. PSYCHIATRIC SERVICE.

If the hospital offers psychiatric service it ~~shall~~ **must** be organized, staffed and equipped to provide inpatient and outpatient treatment to the mentally ill. (~~10-14-88~~)()

01. Staffing. If the hospital offers psychiatric service, it ~~shall~~ **must** be directed and evaluated by a psychiatrist and staffed by adequate numbers of qualified personnel to meet patient needs. (~~10-14-88~~)()

a. A licensed registered nurse qualified by training or experience in psychiatric nursing ~~shall~~ **must** supervise the nursing care rendered in the psychiatric service. (~~10-14-88~~)()

b. Psychiatric service staff ~~shall~~ **must** collaborate with medical, nursing, and other professional personnel in patient care planning, and provide consultation to staff of other services regarding the psychiatric problems of patients. (~~10-14-88~~)()

02. Patient Treatment Plan. Patient's records ~~shall~~ **must** reflect that an individualized plan of treatment is developed for each patient that is specific and appropriate to individual problems and takes into consideration strengths as well as disabilities. The plan ~~shall~~ **must** designate the persons responsible for each component of care and ~~shall~~ **must** be reviewed, evaluated, and updated at regularly scheduled intervals by all professional personnel involved in the patient's care. (~~10-14-88~~)()

03. Policies and Procedures. Policies and procedures governing the service *shall must* be developed by appropriate representatives of each discipline and in collaboration with other appropriate services. (10-14-88)()

04. Examination to Assess Mental Status. All examinations to assess the patient's mental status *shall must* be recorded, signed and dated as soon as possible after admission and *shall must* include a description of the patient's physical and emotional state and intellectual functions. There *shall must* be an initial patient history and report of the patient's mental status within twenty-four (24) hours after admission that may be based on the results of prior examinations by the reporting physician. (10-14-88)()

~~**05. Patient's Rights.** Written Policies and procedures shall be developed regarding patient's rights. (10-14-88)~~

~~**a.** Use of any form of physical restraint, forced treatment, chemical restraint or seclusion shall only occur in circumstances where there is established written policy and approved procedures to warrant such action and/or is ordered by a physician; and (10-14-88)~~

~~**b.** Each patient shall be allowed to communicate with persons outside the facility, except where excluded or limited in accordance with his comprehensive treatment plan. (10-14-88)~~

~~**c.** Each patient shall be apprised of his rights. (10-14-88)~~

06.5. Records. Adequate and comprehensive records *shall must* be retained for assessment, evaluation and treatment purposes. Admitting and subsequent psychiatric diagnoses *shall must* be recorded in currently accepted terminology; and (10-14-88)()

a. The patient's psychiatric history and social evaluation *shall must* provide information regarding the patient's background, the onset and development of the illness, including factors and precipitating circumstances that led to the patient's admission, and data useful for patient care and discharge planning; and (10-14-88)()

b. A properly executed consent form *shall must* be obtained and incorporated into the record in any case of treatment approach that carries significant risks, and shows that the patient, his family, or other legally responsible person is informed of available alternative approaches; *and* (10-14-88)()

c. Documentation *shall must* show that the patient, his family, or other legally responsible person is informed of the treatment to be given; and (10-14-88)()

d. Documentation *shall must* show that planning for continued care and treatment in the community are coordinated with the patient's family and others in his social environment. (10-14-88)()

07.6. Special Medical Record Requirements for Psychiatric Hospitals or Services. In addition to meeting all the requirements contained in Section 360 *of these rules*, patient medical records maintained by a psychiatric hospital or service unit *shall must* clearly reflect the types and intensity of treatment provided to patients in the hospital. The records *shall must* contain the following: (12-31-91)()

a. Information essential for identifying the patient's problems, for developing treatment objectives, and other information necessary for psychiatric evaluation and diagnosis; *and* (10-14-88)()

b. A record of the treatment received by the patient, including records of all treatment related to short-term and long-term goals, including discharge planning; *and* (10-14-88)()

c. The medical record *shall must* provide information regarding the management of the patient's condition and of changes in treatment and patient status. Progress notes *shall must* reflect that care provided in accordance with the treatment plan is recorded at least weekly for the first two (2) months after admission and at least monthly thereafter; and (10-14-88)()

d. Every safeguard ~~shall~~ **must** be employed to preserve confidentiality of the patient-therapist relationship and to prevent revelation of information that would be harmful or embarrassing to the patient, his family, or others. (10-14-88)()

~~087.~~ **Discharge Planning.** Consideration for continued care and services in the community after discharge, placement alternatives, and utilization of community resources ~~shall~~ **must** be initiated on admission and carried out to ensure that each patient has a documented plan for continuing care that meets his individual needs. Provision ~~shall~~ **must** be made for exchange of appropriate information with outside resources. (10-14-88)()

~~098.~~ **Physician Services.** A board certified or board eligible psychiatrist ~~shall~~ **must** provide the overall direction of the service including monitoring and evaluating the quality and appropriateness of psychiatric services rendered. Physicians ~~shall~~ **must** be available at all times to provide medical and surgical diagnosis and treatment services. (10-14-88)()

~~109.~~ **Nursing Service.** The nursing service ~~shall~~ **must** be under the overall direction of a psychiatric nurse qualified by training or experience in psychiatric nursing, who monitors and evaluates nursing care provided. (10-14-88)()

a. A licensed registered nurse ~~shall~~ **must** be on duty twenty-four (24) hours a day, seven (7) days a week to provide direct patient care, and to assign and supervise nursing care activities performed by other nursing personnel. (10-14-88)()

b. There ~~shall~~ **must** be adequate numbers of qualified licensed registered nurses, licensed practical (vocational) nurses, psychiatric technicians, and other supportive nursing personnel to carry out the nursing aspects of the individual treatment plan for each patient and capable of maintaining progress notes on all patients. (10-14-88)()

~~110.~~ **Psychological Services.** The director of the psychological services ~~shall~~ **must** be a clinical psychologist who continually monitors and evaluates the quality and appropriateness of psychological services rendered (in accordance with standards of practice, service objectives, and established policies and procedures). (10-14-88)()

~~121.~~ **Social Services.** The director of social services ~~shall~~ **must** be a social worker who monitors and evaluates the quality and appropriateness of social services (in accordance with service objectives, standards of practice, and established policies and procedures). (10-14-88)()

~~132.~~ **Therapeutic Activities.** The hospital ~~shall~~ **must** provide a therapeutic activities program appropriate to meet the needs and interests of patients that is directed toward rehabilitation to and maintenance of optimal levels of physical and psychosocial functioning, and toward attaining a life style appropriate for each patient. (10-14-88)()

a. If occupational therapy services are offered, they ~~shall~~ **must** be under the supervision of an occupational therapist. (10-14-88)()

b. Adequate numbers of qualified therapists, supportive personnel, and consultants ~~shall~~ **must** be available to provide comprehensive therapeutic activities in conjunction with each patient's treatment plan. (10-14-88)()

c. Therapeutic recreational activities ~~shall~~ **must** be under the supervision of a designated member of the staff who has demonstrated competence in therapeutic recreational activities programs. (10-14-88)()

d. The supportive staff of the occupational therapy and therapeutic recreational activities services ~~shall~~ **must** be provided formal orientation and inservice training to enable them to carry out assigned functions. (10-14-88)()

e. If volunteers are utilized in the therapeutic activities program, they ~~shall~~ **must** be provided appropriate orientation, training, and supervision by qualified professional staff. (10-14-88)()

~~143.~~ **Physical Therapy Service.** If physical therapy services are offered, the director of the service ~~shall~~ **must** be a physical therapist who monitors the quality and appropriateness of services rendered. ~~(10-14-88)()~~

~~154.~~ **Psychiatric Unit Space.** After the effective date of these rules, any psychiatric unit not free standing ~~shall~~ **must** be separated and able to be secured from the general hospital with which it is associated. Each psychiatric service unit, free standing or not, ~~shall~~ **must** include the following: ~~(10-14-88)()~~

- a. Consultation room or rooms; ~~and~~ ~~(10-14-88)()~~
- b. Facilities for examination and a treatment room for medical procedures; ~~and~~ ~~(10-14-88)()~~
- c. At least one (1) observation room for acutely disturbed patients, with facilities for visual observation; ~~and~~ ~~(10-14-88)()~~
- d. Facilities for dining; and (10-14-88)
- e. Indoor and outdoor facilities for therapeutic activities. (10-14-88)

16. Construction of Psychiatric Hospitals. New construction, alterations, or modifications ~~shall~~ **must** not be made until plans and specifications have been approved by the licensing agency. ~~(10-14-88)()~~

(BREAK IN CONTINUITY OF SECTIONS)

~~601. -- 995.~~ (RESERVED)

~~996. ADMINISTRATIVE PROVISIONS.~~

~~Hearings and appeals shall be governed according to the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000 et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ ~~(12-31-91)~~

~~997. CONFIDENTIALITY.~~

~~Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this law, shall not be disclosed publicly in such a manner as to identify individual residents or patients of facilities or agencies as defined, except in a proceeding involving the question of licensure.~~ ~~(10-14-88)~~

~~998. INCLUSIVE GENDER.~~

~~For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.~~ ~~(10-14-88)~~

~~999. SEVERABILITY.~~

~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.14, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.~~ ~~(10-14-88)~~

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.05.04 – RULES OF THE IDAHO COUNCIL ON DOMESTIC VIOLENCE
AND VICTIM ASSISTANCE GRANT FUNDING

DOCKET NO. 16-0504-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-5209, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

To best protect the public's health and safety, the Council on Domestic Violence and Victim Assistance is revising its standards manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 225 and 226](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative 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 or any other funds related to this rulemaking. Programs affiliated with the ICDVVA provide fees independently. Currently there are no direct funds going to independent programs for offender intervention.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kimberly Conklin at (208) 332-1545.

Dated this 20th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 39-5209, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

To best protect the public's health and safety, the Council on Domestic Violence and Victim Assistance is revising its standards manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

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 or any other funds related to this rulemaking. Programs affiliated with the ICDVVA provide fees independently. Currently there are no direct funds going to independent programs for offender intervention.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the content to be proposed for updates to the standards manual for the Idaho Council on Domestic Violence and Victim Assistance (ICDVVA) represents extensive input from stakeholders being gathered at meetings of the Committee for Oversight of Domestic Violence Offender Intervention Programs and Standards, a committee that oversees ICDVVA Offender Intervention Programs. The committee is responsible for making decisions on changes to the standards manual. In addition, the ICDVVA continually receives feedback from the Domestic Violence Offender Intervention Program Providers and the Domestic Violence court coordinators throughout the state.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the Minimum Standards for Domestic Violence Offender Intervention Programs, edition 2019-1, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request. Once the docket has been finalized and adopted, the manual will be available online at: <https://icdv.idaho.gov/offender-intervention.html>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kimberly Conklin at (208) 332-1545.

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 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0504-1810

004. INCORPORATION BY REFERENCE.

01. Documents Incorporated by Reference. In accordance with Section 67-5229, Idaho Code, the following documents are incorporated by reference into this chapter of rules: (7-1-14)

a. “Service Standards for ICDVVA-Funded Programs,” Edition 2014-1, published by the Idaho Council on Domestic Violence and Victim Assistance, effective July 1, 2014. (7-1-14)

b. “Minimum Standards for Domestic Violence Offender Intervention Programs,” published by the Idaho Council on Domestic Violence and Victim Assistance, edition 201~~7~~⁹-1, effective July 1, 201~~7~~⁹.
(~~3-29-12~~)()

02. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available: (7-1-14)

a. At the Idaho Council on Domestic Violence and Victim Assistance, 304 North 8th Street, Suite 140, P.O. Box 83720, Boise, Idaho 83720-0036. (7-1-14)

b. On the internet at: <http://www.icdv.idaho.gov>. (7-1-14)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is August 23, 2018. This pending rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code, and Under 42 USC Section 9858f.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

With the adoption of IDAPA 16.07.17, “Substance Use Disorders Services,” DHW has identified a new class of individuals that must complete a DHW criminal history and background check in order to provide those services. This requires that this class of individuals be added to the chapter to ensure that the Department of Health and Welfare retains the statutory authority to complete those background checks. Key elements were inadvertently missed with the previous rulemaking and are now included as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule as previously adopted while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions made to the pending rule. Only the sections that differ from the proposed rule text are printed in this Bulletin. The original text of the temporary and proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 123 through 126](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact to the State General Fund or to dedicated funds for these rule changes. This rulemaking is intended to be cost-neutral. NOTE: The Department will have to change its web-based background check system to enable this change. It estimates that the cost of these system changes will be \$3,000.00. These modifications will be performed by DHW Information Technology staff, and it is an expense that is already integrated in the operational budget of the Department.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Fernando Castro, (208) 332-7999.

Dated this 31st day of August, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
Phone: (208) 334-5500 / Fax: (208) 334-6558
dhwrules@dhw.idaho.gov

450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 Title 15 Chapter 5, Title 66 Chapter 4, Title 39 Chapter 3, Chapter 31, and Chapter 46, Title 56 Chapter 2, and Section 56-1004A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 18, 2018.

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:

DHW has identified a new class of individuals that must complete a DHW criminal history and background check due to the adoption of IDAPA 16.07.17, "Substance Use Disorders Services." This class of individuals must be added to the chapter ensure that the Department of Health and Welfare retains the statutory authority to complete those background checks.

The Department's Bureau of Emergency Medical Services has determined that the requirement to have its applicants processed as an enhanced background check is counterproductive to the needs of the EMS community as these background checks take longer to process due to the additional research required. The Bureau of Emergency Medical Services will still require their applicants to pass a DHW background check but needs to have them removed from the chapter.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: (a) it is necessary to protect the public health, safety, or welfare; and (b) it complies with deadlines in amendments to governing law or federal programs.

Due to the nature of the state administrative rulemaking process, when a DHW program makes changes to their rules, and those changes are approved and enacted by the state Legislature, DHW must change all other rules affected by those changes at the earliest possible opportunity. This temporary rule change is being sought to ensure that DHW retains the statutory authority to complete any new background check requirements, or, to cease any efforts to complete them once it has been determined that they are no longer required or needed.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact to the State General Fund or to dedicated funds for these rule changes. The monies needed for this change are already part of the Department's operational budget dedicated to the maintenance and operations of its web-based background check system. The Department will not increase the background check fee to the applicant with this change making it cost-neutral to the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is not feasible due to the short time frame to implement these changes.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Fernando Castro, (208) 332-7999.

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 July 25, 2018.

DATED this 5th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

Substantive changes have been made to the pending rule.
Italicized red text that is double underscored is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0506-1801

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or Department rules to complete a criminal history and background check. (3-4-11)

01. Adoptive Parent Applicants. Individuals who must comply with IDAPA 16.06.01, “Child and Family Services,” and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

02. Behavioral Health Community Crisis Centers. Individuals who must comply with IDAPA 16.07.30, “Behavioral Health Community Crisis Centers.” (4-6-15)

03. Behavioral Health Programs. Individuals who must comply with IDAPA 16.07.15, “Behavioral Health Programs.” (3-24-17)

04. Certified Family Homes. Individuals who must comply with Section 39-3520, Idaho Code, IDAPA 16.03.19, “Rules Governing Certified Family Homes,” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

05. Children's Residential Care Facilities. Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

06. Children's Therapeutic Outdoor Programs. Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

07. Contracted Non-Emergency Medical Transportation Providers. Individuals who must comply with IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (3-4-11)

08. Court Appointed Guardians and Conservators. Individuals who must comply with the

requirements of Title 15, Chapter 5, Idaho Code, and Title 66, Chapter 4, Idaho Code. Court required guardian and conservator criminal history and background checks are not provided Department clearances described in Section 180.01 of these rules. (3-20-14)

09. Designated Examiners and Designated Dispositioners. Individuals who must comply with IDAPA 16.07.39, “Appointment of Designated Examiners and Designated Dispositioners.” (3-4-11)

10. Developmental Disabilities Agencies. Individuals who must comply with IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA),” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

11. Emergency Medical Services (EMS). Individuals who must comply with IDAPA 16.01.05, “Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements,” and IDAPA 16.01.07, “Emergency Medical Services (EMS) -- Personnel Licensing Requirements.” (3-24-17)

12. High Risk Providers of Medicaid. Individuals who must comply with IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” and the Medicaid Provider Handbook. (4-6-15)

13. Home and Community-Based Services (HCBS). Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” and IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies.” (7-1-12)

14. Home Health Agencies. Individuals who must comply with IDAPA 16.03.07, “Home Health Agencies.” (3-4-11)

15. Idaho Behavioral Health Plan (IBHP). Individuals who are contractors, contractor’s employees, and subcontractors in accordance with IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (4-6-15)

16. Idaho Child Care Program (ICCP). Individuals who must comply with IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program.” (3-4-11)

17. Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID). Individuals who must comply with IDAPA 16.03.11, “Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).” (3-4-11)

18. Licensed Foster Care. Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

19. Licensed Day Care. Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

20. Mental Health Services. Individuals who must comply with IDAPA 16.07.33, “Adult Mental Health Services,” and IDAPA 16.07.37, “Children’s Mental Health Services.” (4-6-15)

21. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units. Individuals who must comply with IDAPA 16.07.50, “Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.” (3-4-11)

22. Personal Assistance Agencies. Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

23. Personal Care Service Providers. Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

24. Residential Care or Assisted Living Facilities in Idaho. Individuals who must comply with IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” (3-4-11)

25. Service Coordinators and Paraprofessional Providers. Individuals who must comply with

IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

26. Skilled Nursing and Intermediate Care Facilities. Individuals who must comply with IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities." (3-4-11)

27. Substance Use Disorders Services. Individuals who must comply with IDAPA 16.07.17, "Substance Use Disorders Services." ()

~~**27. Support Brokers and Community Support Workers.**~~ Individuals who must comply with IDAPA 16.03.13, "Consumer-Directed Services." (3-4-11)

(BREAK IN CONTINUITY OF SECTIONS)

126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a criminal history and background check. (7-1-17)

01. Adoptive Parent Applicants. Described in Subsection 100.01 of these rules. (7-1-17)

02. Behavioral Health Community Crisis Centers. Described in Subsection 100.02 of these rules. (7-1-17)

03. Behavioral Health Programs. Described in Subsection 100.03 of these rules. (7-1-17)

04. Children's Residential Care Facilities. Described in Subsection 100.05 of these rules. (7-1-17)

05. Children's Therapeutic Outdoor Programs. Described in Subsection 100.06 of these rules. (7-1-17)

~~**06. Emergency Medical Services (EMS).**~~ Described in Subsection 100.11 of these rules. (7-1-17)

~~**07. Idaho Child Care Program (ICCP).**~~ Described in Subsection 100.16 of these rules. (7-1-17)

~~**08. Licensed Foster Care.**~~ Described in Subsection 100.18 of these rules. (7-1-17)

~~**09. Licensed Day Care.**~~ Described in Subsection 100.19 of these rules. (7-1-17)

~~**10. Mental Health Services.**~~ Described in Subsection 100.20 of these rules. (7-1-17)

~~**11. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.**~~ Described in Subsection 100.21 of these rules. (7-1-17)

11. Substance Use Disorders Services. Described in Subsection 100.27 of these rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial. Unconditional denials are issued for: (3-4-11)

a. Disqualifying crimes described in Section 210 of these rules; (3-4-11)

b. A relevant record *or finding* on any Child Protection Registry for the classes of individuals listed in Section 126 of these rules; (7-1-17)()

c. *A relevant record on the Idaho Child Protection Central Registry with a Level one (1) or Level two (2) designation for all other applicants covered by these rules;* ()

ed. A relevant record on the Nurse Aide Registry; (7-1-14)

de. A relevant record on either the state or federal sex offender registries; (7-1-17)

ef. A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules; or (7-1-17)

fg. A materially false statement made knowingly in connection to the Department's criminal history and background check application for the classes of individuals listed in Section 126 of these rules will result in a five-year disqualification period for the applicant. (7-1-17)

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has twenty-eight (28) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. (7-1-14)

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. Appeal of an Unconditional Denial. Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of the Department. (7-1-14)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.06.12 – RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)
DOCKET NO. 16-0612-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The Department has adopted the pending rule to clarify the processes for determining eligibility and has updated terms to align with the Reauthorization of the Child Care and Development Block Grant federal regulations.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018 Idaho Administrative Bulletin, **Vol. 18-9, pages 185-189**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Department does not anticipate any fiscal impact to state general funds or to the federally-funded block grant for the proposed rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ericka Rupp at (208) 334-5641.

Dated this 14th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

The Department has adopted these temporary rules to clarify the processes for determining eligibility and has updated terms to align with the Reauthorization of the Child Care and Development Block Grant federal regulations.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to update and align these rules with the federal requirements that will become effective as of October 1, 2018.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Department does not anticipate any fiscal impact to state general funds or to the federally-funded block grant for the proposed rule changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because changes are being adopted as temporary rules to ensure compliance with federal laws that are effective October 1, 2018, and are not negotiable.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ericka Rupp at (208) 334-5641.

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 September 26, 2018.

Dated this 2nd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-1810

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. Criminal history and background checks are required for ICCP providers. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

02. ICCP Provider is Approved. The ICCP provider must have completed a criminal history and background check, and received a clearance, prior to becoming an ICCP provider. (4-9-09)

03. Availability to Work or Provide Service. (4-9-09)

~~a. *The employer or provider, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records.*~~ (4-9-09)

~~b. Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department.~~ (4-9-09)

~~eb. Individuals living in the home who have direct contact with children are allowed contact after the criminal history application and self-disclosure is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a disqualifying crime listed in IDAPA 16.05.06, "Criminal History and Background Checks."~~ (4-9-09)

04. Applicants, Providers, and Other Individuals Subject to Criminal History Check Requirements. The following applicants, providers, and other individuals listed below must submit evidence to the Department that the following individuals have successfully completed and received a Department criminal history and background check clearance: (3-2-17)

a. All child care centers group, family, relative, and in-home providers including owners, operators, and staff, who have direct contact with children; (3-2-17)

b. All individuals thirteen (13) years of age or older who have direct contact with children; and (3-2-17)

c. All individuals thirteen (13) years of age or older who are regularly on the premises. (3-2-17)

05. Renewal of Criminal History and Background Check Requirement. Applicants, providers, employees, volunteers, and individuals thirteen (13) years of age or older who have direct contact with or provide care to children eligible for ICCP benefits must comply with these requirements and receive a clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks," every five (5) years. (3-2-17)

06. Criminal History and Background Check at Any Time. The Department can require a criminal

history and background check at any time on any individual providing child care to an ICCP eligible child. (4-9-09)

07. Additional Criminal Convictions. Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the child care provider to the Department when the provider learns of the conviction. (4-9-09)

(BREAK IN CONTINUITY OF SECTIONS)

503. COPAYMENTS.

Eligible families, except TAFI families participating in non-employment TAFI activities and guardians of foster children, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and must not waive these costs. (3-2-17)

01. Poverty Rates. Poverty rates will be one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-4-13)

02. Calculating Family Payment. Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment. (4-4-13)

03. Changes to Copayments. A family's share of child care costs will not increase due to a change in income only. ()

(BREAK IN CONTINUITY OF SECTIONS)

**CHANGE REPORTING REQUIREMENTS FOR THOSE
RECEIVING CHILD CARE BENEFITS
(Sections 600 - 699)**

600. CHANGE REPORTING REQUIREMENTS.

A family who receives child care benefits must report the following permanent changes by the tenth day of the month following the month in which the change occurred. (4-4-13)

01. Change in Full-time or Part-time Activity Hours. (3-28-18)

02. Change in Permanent Address. (3-28-18)

03. Change in Household Composition. (4-4-13)

04. Change in Income. When the household's total gross income for family of the same size exceeds ~~the income limit for the program, as described the higher of either~~ any of the following: ()

a. ~~One~~ One hundred and thirty percent (130%) of the Federal Poverty Guidelines (FPG) ~~or:~~ ()

b. ~~Eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size; or~~ Eighty-five percent (85%) of the State Median Income (SMI) ~~(3-28-18)~~ ()

c. The graduated phase-out income limit as defined in the Idaho Child Care State Plan. ()

05. Change in Child Care Provider. (5-1-11)

(BREAK IN CONTINUITY OF SECTIONS)

602. REDETERMINATION OF ELIGIBILITY FOR CHILD CARE BENEFITS.

01. Redetermination. The Department must redetermine eligibility for child care benefits at least every twelve (12) months. (3-2-17)

02. Graduated Phase Out. At the time of redetermination, if a household's income exceeds one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size eligible children may receive a graduated phase out benefit. Graduated phase out benefits are limited to twelve (12) months following the completion of a redetermination as defined in the Idaho Child Care State Plan. (~~3-28-18~~)()

603. -- 699. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

704. DENIAL OF PAYMENT.

The Department may deny payment for the reasons described in Subsections 704.01 through 704.04~~5~~ of this rule. (~~7-1-09~~)()

01. Services Not Provided. Any or all claims for child care services it determines were not provided. (7-1-09)

02. Services Not Documented. Child care services not documented by the provider as required in Subsection 810.01 of these rules. (7-1-09)

03. Contrary to Rules or Provider Agreement. Child care services provided contrary to these rules or the provider agreement. (7-1-09)

04. Failure to Provide Immediate Access to Records. The Department may deny payment when the provider does not allow immediate access to records as provided in Subsection 810.02 of these rules. (7-1-09)

05. Paying for Attendance. Payment will be denied if an eligible provider pays directly or indirectly, overtly or covertly, for a child to attend the provider's child care facility. ()

(BREAK IN CONTINUITY OF SECTIONS)

810. DOCUMENTATION OF SERVICES AND ACCESS TO RECORDS.

01. Documentation of Services. Providers must generate documentation at the time of service sufficient to support the reimbursement for child care services. Documentation must be legible and must be retained for a period of three (3) years from the date the child care was provided. Documentation to support child care services includes: (7-1-09)

a. Records of attendance, including signatures of a parent or guardian; (~~7-1-09~~)()

b. Immunization records, conditional admittance form, or exemption form according to IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." (4-4-13)

c. Billing records and receipts; (7-1-09)

d. Policies regarding sign-in procedures, and others as applicable; and (7-1-09)

e. Sign-in records, electronic or manual, or the Child and Adult Food Care Program records. (7-1-09)

02. Immediate Access to Records. Providers must grant to the Department and its agents, immediate access to records for review and copying during normal business hours. These records are defined in Subsection 810.01 of this rule. (7-1-09)

03. Copying Records. The Department and its authorized agents may copy any record as defined in Subsection 810.01 of this rule. The Department may request in writing to have copies of records supplied by the provider. The requested copies must be furnished within twenty (20) working days after the date of the written request, unless an extension of time is granted by the Department for good cause. Failure to timely provide requested copies will be a refusal to provide access to records. (7-1-09)

04. Removal of Records From Provider's Premises. The Department and its authorized agents may remove from the provider's premises copies of any records defined in Subsection 810.01 of this rule. (7-1-09)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.37 – CHILDREN'S MENTAL HEALTH SERVICES

DOCKET NO. 16-0737-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The DSM-5 no longer includes Axis 1 diagnosis. The standard for referring parents to Child Support for children in Alternate Care is being removed. This rule appears to be a left-over from the days when Title IV-E funded alternate care. The rule is obsolete and does not align with the rest of the Children's Mental Health and Behavioral Health program which requires parental obligations be calculated via the sliding fee schedule.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 190-192](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Division of Behavioral Health is proposing to transition from using the child support system to using our sliding fee scale process to collect parental financial obligations when a child is placed in alternate care. The change will be in the method of calculating and collecting and should not impact the amount collected. We do not anticipate a fiscal impact. There is no anticipated fiscal impact to state general funds, or any other funds as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Treena Clark, (208) 334-6611.

Dated this 14th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 DSM-5 no longer includes Axis 1 diagnosis. The standard for referring parents to Child Support for children in Alternate Care is being removed. This rule appears to be a left-over from the days when Title IV-E funded alternate care. The rule is obsolete and does not align with the rest of the Children's Mental Health and Behavioral Health program which requires parental obligations be calculated via the sliding fee scale.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The Division of Behavioral Health is proposing to transition from using the child support system to using our sliding fee scale process to collect parental financial obligations when a child is placed in alternate care. The change will be in the method of calculating and collecting and should not impact the amount collected. There is no anticipated fiscal impact to state general funds, or any other funds as a result of 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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 127 and 128](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Treena Clark, (208) 334-6611.

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 26, 2018.

Dated this 2nd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0737-1810

107. ELIGIBILITY DETERMINATION.

01. The Department Determines Eligibility for Mental Health Services. The total number of children who are eligible for mental health services through the Department will be established by the Department. The Department may, in its sole discretion, limit or prioritize mental health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (4-7-11)

02. Eligibility Requirements. To be eligible for children's mental health services through a voluntary application to the Department, the applicant must: (5-8-09)

a. Be under eighteen (18) years of age; (5-8-09)

b. Reside within the state of Idaho; (5-8-09)

c. Have a DSM-5 ~~Axis-I~~ mental health diagnosis. A substance use disorder alone, or developmental disorder alone, does not constitute an eligible ~~Axis-I~~ mental health diagnosis, although one (1) or more of these conditions may co-exist with an eligible ~~Axis-I~~ mental health diagnosis; and (7-1-17)(____)

d. Have a substantial functional impairment as assessed by using the Department's approved tool. (7-1-17)

03. Court-Ordered Assessment, Treatment, and Services. The court may order the Department to provide assessment, treatment, and services under the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code and the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code. Subject to court approval, the Department will make efforts to include parents and guardians in the assessment, treatment, and service planning process. Parents or guardians retain custody of the child. (7-1-17)

04. Ineligible Conditions. A child who does not meet the requirements under Subsections 107.02 or 107.03 of this rule is not eligible for children's mental health services, other than crisis response. A child 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 Disorders Services" or IDAPA 16.04.11, "Developmental Disabilities Agencies," for substance use or developmental disability services. (7-1-17)

(BREAK IN CONTINUITY OF SECTIONS)

236. PARENTAL FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.

In accordance with Sections 56-203B and 16-2406, Idaho Code, parent(s) are responsible for costs associated with the care of their child in alternate care. (5-8-09)

01. Notice of Parental Responsibility. The Department will provide the parent(s) with written notification of their responsibility to contribute toward the cost of their child's support, treatment, and care, including clothing, medical, incidental, and educational costs. (5-8-09)

02. Financial Arrangements with Parent(s). Parent(s) are responsible to reimburse the Department for the costs of alternate care when their child is placed in alternate care in accordance with a court order or voluntary placement agreement. Parents are expected to contribute to the cost of their child's care, but parents will not be asked to pay more than the actual cost of care, including clothing, medical, incidental, and educational costs.

~~(5-8-09)~~ ()

- ~~a. Parents are expected to contribute to the cost of their child's care, but parents will not be asked to pay more than the actual cost of care, including clothing, medical, incidental and educational costs. (5-8-09)~~
- ~~b. The Department will refer the parent(s) to the Bureau of Child Support Services for support payment calculation and payment arrangements. (5-8-09)~~

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.50 – MINIMUM STANDARDS FOR NONHOSPITAL, MEDICALLY MONITORED DETOXIFICATION/MENTAL HEALTH DIVERSION UNITS

DOCKET NO. 16-0750-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The Division has received feedback from providers approved under this rule, who indicate portions of the rules are over-prescriptive, use archaic terms and do not reflect current best practices. Internally, a policy unit rule analysis indicates that this chapter is not in alignment with other Division of Behavioral Health rules and approval practices.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 193 through 237](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

These changes include the fee structure to align with other Division of Behavioral Health rules and approval practices. The current structure is an initial \$500 application fee for programs seeking approval under the rule and an annual renewal fee of \$96 per bed. The proposed rule will reduce the initial application fee from \$500 to \$100. It will also change from an annual renewal fee of \$96 per bed to a flat \$100 renewal fee that is paid every three years. The Division has not had a new application for approval under these rules since 2015. Renewal fees for the last two SFY have been consistent at \$3648 per year. The impact of this rule change is negligible.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Adam Panitch (208) 334-4916.

Dated this 16th day of November, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 has received feedback from providers approved under this rule, who indicate portions of the rules are over-prescriptive, use archaic terms and do not reflect current best practices. Internally, a policy unit rule analysis indicates that this chapter is not in alignment with other Division of Behavioral Health rules and approval practices.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

These proposed changes include the fee structure to align with other Division of Behavioral Health rules and approval practices. The current structure is an initial \$500 application fee for programs seeking approval under the rule and an annual renewal fee of \$96 per bed. The proposed rule will reduce the initial application fee from \$500 to \$100. It will also change from an annual renewal fee of \$96 per bed to a flat \$100 renewal fee that is paid every three years. The Division has not had a new application for approval under these rules since 2015. Renewal fees for the last two SFY have been consistent at \$3,648 per year. The impact of this rule change is negligible.

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 July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 129-130](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the ASAM Criteria, Third Edition, the DSM-5, 2013 Edition, and the National Electrical Code, 2017 Edition are being incorporated by reference into these rules to give them the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request from Division of Behavioral Health.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Adam Panitch, (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 September 26, 2018.

Dated this 3rd day of August, 2018.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

Italicized red text that is *double underscored* indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0750-1810

000. LEGAL AUTHORITY.

Under Title 39, Chapter 3, Idaho Code, the Board of Health and Welfare has authority to adopt minimum standards, rules, and regulations for the development, construction, and operation of nonhospital, medically monitored detoxification/mental health diversion units in Idaho. The Idaho Legislature has designated delegated to the Department of Health and Welfare as the State Mental Behavioral Health Authority ~~and the State Substance Abuse Authority. The Department's responsibility is to assure that mental health and substance use disorders treatment and services are available throughout the state to individuals who need such care and who meet the eligibility criteria under~~ the authority to promulgate and enforce rules to carry out the purposes and intent of the Regional Mental Behavioral Health Services Act and the Alcoholism and Intoxication Treatment Act. Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code, authorize the Board of Health and Welfare and the Director of the Department to adopt and enforce rules to promote safe and adequate services and treatment of individuals within nonhospital, medically monitored detoxification/mental health diversion units. ~~(3-29-10)~~()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The Department has incorporated by reference the following documents in these rules. (3-29-10)

01. AIA Guidelines for Design and Construction of Health Care Facilities, (AII) 2006. AIA Guidelines for Design and Construction of Health Care Facilities, (AII) 2006, are applicable to airborne infection isolation rooms ~~for facilities operating a sobering station.~~ The guidelines are available online at <http://www.aia.org/>. ~~(3-29-10)~~()

02. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI/ICC A117.1-2003). These standards are available online at <http://www.ansi.org/>. (3-29-10)

03. Americans with Disabilities Act Accessibility Guidelines. 28 CFR Part 36, Appendix A. This code is available online at <http://www.ada.gov/publicat.htm>. Contact phone number is (800) 514-0301. (3-29-10)

04. The ASAM ~~PPC-2R~~ Criteria. American Society of Addiction Medicine (ASAM) Patient Placement Treatment Criteria for ~~the Treatment of Addictive~~ Substance-Related ~~Disorders, Second, and Co-Occurring Conditions Third~~ Edition ~~—Revised (ASAM-PPC-2R)~~. A copy of this manual is available by mail at the American Society of Addiction Medicine, 4601 North Park Ave., Suite 101, Chevy Chase, MD 20815; by telephone and fax, (301) 656-3920 and (301) 656-3815 (fax); or on the internet at <http://www.asam.org>. ~~(3-29-10)~~()

05. ~~DSM-IV-TR~~ 5. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth Fifth~~ Edition, ~~Text Revision~~ (DSM-~~IV-TR~~5) Washington, D.C., American Psychiatric Association,

200013. Copies of the manual are available from the American Psychiatric Association, ~~1400 K Street, N.W., Washington, DC, 20005~~ 1000 Wilson Boulevard, Suite 1825, 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. (3-29-10)()

06. Idaho Board of Nursing Rules. IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." These rules are available online at <http://adminrules.idaho.gov/rules/current/23/230101.pdf>. (3-29-10)

07. Idaho Diet Manual. The Idaho Diet Manual, Ninth Edition, 2005, is available from the Idaho Dietetic Association, online at <http://eatrightidaho.org>. (3-29-10)

08. Idaho Food Code. IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." These rules are available online at <http://adminrules.idaho.gov/rules/current/16/160219.pdf>. (3-29-10)

09. ~~International Building Code, Edition 2003~~ IDAPA 07.03.01, "Rules of Building Safety. This code is available from the International Code Council, 4051 West Flossmoor Rd., Country Club Hills, IL 60478-5795, phone: (888) 422-7233, and The agency herein incorporates by reference current rule IDAPA 07.03.01, "Rules of Building Safety," of the Idaho State Division of Building Safety as approved by the Idaho Legislature. These rules are available online at <http://www.icesafe.org> <https://adminrules.idaho.gov/rules/current/07/070301.pdf>. (3-29-10)()

10. Life Safety Code. National Fire Protection Association Standard 101, the Life Safety Code, 2000 Edition, including mandatory references. A copy of the code is available at 1 Batterymarch Park, Quincy, Massachusetts, 02169-7471. The telephone contact number is (800) 344-3555. The code is available online at <http://www.nfpa.org/catalog/product.asp?pid=10100>. (3-29-10)

11. ~~National Electric Code~~ IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code. National Electric Code AKA: NFPA Standard 70, the National Electric Code, 2000 Edition The agency herein incorporates by reference current rule. IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code," of the Idaho State Division of Building Safety as approved by the Idaho Legislature. A copy of the code is These rules are available online at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=70> <https://adminrules.idaho.gov/rules/current/07/070106.pdf>. (3-29-10)()

12. National Fire Protection Association (NFPA) Documents. The NFPA documents referenced in this chapter of rules are available from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322-9908, (800) 344-3555, and online at <http://www.nfpa.org>. (3-29-10)

13. National Sanitation Federation. The National Sanitation Federation Standards. These standards may be found online at http://www.nsf.org/business/about_NSF/. (3-29-10)

14. Occupational Safety and Health Act of 1970 (OSHA). The OSHA Construction Standards may be obtained by contacting OSHA at 200 Constitution Avenue, NW, Washington, DC 20210. The internet website is <http://www.osha.gov/doc/index.html>. (3-29-10)

005. OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – TELEPHONE – AND 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. (3-29-10)

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. (3-29-10)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State St., Boise, Idaho 83702. (3-29-10)

5500. **04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (3-29-10)
- 05. Internet Website.** The Department's internet website at <http://www.healthandwelfare.idaho.gov>. (3-29-10)
- 06. Substance Abuse Services Website.** The Substance Abuse Services internet website at <http://www.substanceabuse.idaho.gov>. (3-29-10)
- ~~**07. Mental Health Services Website.** The Mental Health Services internet site is <http://www.mentalhealth.idaho.gov>. ()~~

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS A THROUGH K.

For the purposes of this chapter of rules, the following definitions apply. (3-29-10)

- 01. Administrator.** The person delegated the responsibility for the day-to-day operation and management of a detox/mental health diversion unit by the governing body. The administrator, owner, medical director, ~~lead nurse~~ **director of nursing**, or mental health program director may be the same individual. The term “administrator” is synonymous with the term “chief executive officer (CEO).” ~~(3-29-10)()~~
- 02. Adult.** An individual eighteen (18) years of age, or older. (3-29-10)
- 03. Applicant.** An individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, who is planning to operate or maintain a detox/mental health diversion unit in Idaho. (3-29-10)
- 04. ASAM.** The American Society of Addiction Medicine. (3-29-10)
- 05. Board.** The Idaho State Board of Health and Welfare. (3-29-10)
- 06. Change of Ownership.** The sale, purchase, exchange, or lease of an existing facility by the present owner to a new owner. (3-29-10)
- ~~**07. Chemical Dependency Counselor.** *A professional counselor licensed by the Idaho State Licensing Board of Professional Counselors and Marriage and Family Therapists under Title 54, Chapter 34, Idaho Code, who:*
a. Has specialized training, education, and experience in the treatment of persons with problems related to alcohol and drug use; and
b. Meets the requirements for certification as a alcohol and drug counselor under IDAPA 16.07.17, “Substance Use Disorders Services.”
(3-29-10)~~
- ~~**08. Chemical Restraint.** The use of drugs that prevents a client from doing what he might do voluntarily on his own. (3-29-10)~~
- ~~**09. Chief Executive Officer (CEO).** The individual delegated the responsibility for the day-to-day operation and management of a detox/mental health diversion unit by the governing body. The chief executive officer, owner, medical director, ~~lead nurse~~ **director of nursing**, or mental health program director may be the same individual. The term “chief executive officer (CEO)” is synonymous with the term “administrator.” ~~(3-29-10)()~~~~
- ~~**10. Client.** An adult, who is not the subject of involuntary commitment proceedings or detention without a hearing, as provided in Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code, and who receives services at a detox/mental health diversion unit. The term “client” is synonymous with the terms: patient,~~

participant, resident, consumer, or recipient of treatment. (3-29-10)

140. Department. The Idaho Department of Health and Welfare. The Department is designated as the State Mental Health Authority under Section 39-3124, Idaho Code, and as the State Substance Abuse Authority under Section 39-304, Idaho Code. (3-29-10)

121. Director. The Director of the Department of Health and Welfare, or his designee. (3-29-10)

132. ~~Full Accreditation~~ Certificate of Approval. A certificate of approval issued for a period of ~~one~~ ~~three~~ (~~3~~) years to a facility that is in substantial compliance with these rules and minimum standards. (~~3-29-10~~)()

143. Governing Body. The individual or individuals, board of directors, group, agency, or entity that has ultimate authority and responsibility for the overall conduct and operation of the facility, and for full compliance with these rules and minimum standards. (3-29-10)

154. Governmental Unit. The state of Idaho, any county, municipality, or other political subdivision, or any department, division, board, or other agency thereof. (3-29-10)

011. DEFINITIONS AND ABBREVIATIONS L THROUGH Z.
For the purposes of this chapter of rules, the following definitions apply. (3-29-10)

01. ~~Lead Nurse~~ Director of Nursing. A qualified licensed registered nurse (R.N.) licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing,” who is so designated by the governing body. The ~~lead nurse~~ ~~director of nursing~~, administrator, or mental health program director may be the same individual. The ~~lead nurse~~ ~~director of nursing~~ is responsible for nursing care provided to clients and for supervising the nursing care and services provided by staff. (~~3-29-10~~)()

02. ~~Level of Care Utilization System (“LOCUS”).~~ ~~A clinical level of care placement tool for psychiatric and addictions services, developed by the American Association of Community Psychiatrists.~~ (~~3-29-10~~)

03. Licensed Clinical Social Worker (LCSW). A clinical social worker licensed by the Idaho State Board of Social Work Examiners under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the Board of Social Work Examiners.” (3-29-10)

043. Licensed Marriage and Family Therapist (LMFT). A person licensed to practice marriage and family therapy by the Idaho State Board of Professional Counselors and Marriage and Family Therapists, under Title 54, Chapter 34, Idaho Code, and IDAPA 24.14.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” (3-29-10)

054. Licensed Master’s Level Social Worker (LMSW). A master’s level social worker licensed by the Idaho State Board of Social Work Examiners under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the Board of Social Work Examiners.” (3-29-10)

065. Licensed Practical Nurse (L.P.N.). A practical nurse licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” (3-29-10)

076. Licensed Professional Counselor (LPC). A professional counselor licensed by the Idaho State Board of Professional Counselors and Marriage and Family Therapists, under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” (3-29-10)

087. Licensed Registered Nurse (R.N. or Licensed Registered Nurse). A licensed registered nurse licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” (3-29-10)

098. Mechanical Restraint. Any apparatus that physically prevents a client from doing what he might

do voluntarily on his own, including “safety belts.” The term “mechanical restraint” is synonymous with the term “physical restraint.” (3-29-10)

~~109.~~ **Medical Director.** A qualified physician licensed by the Idaho State Board of Medicine in accordance with Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, “Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho,” who is so designated by the governing body. The medical director is responsible for providing medical care to clients and for supervising all of the medical care, services, and treatment provided by the medical staff. (3-29-10)

~~140.~~ **Medical Staff.** Professional medical personnel employed, full-time or part-time, who are licensed under Title 54 or Title 56, Idaho Code, to provide medical care and services to clients in a Detox/Mental Health Diversion Unit. (3-29-10)

~~121.~~ **Mental Health Clinical Staff.** Professional mental health personnel employed, full-time or part-time, who are licensed under Title 54, Idaho Code, to provide mental health counseling, treatment, and services to clients in a Detox/Mental Health Diversion Unit. (3-29-10)

~~132.~~ **Mental Health Program Director.** A qualified psychiatrist, psychologist, licensed registered nurse, licensed clinical professional counselor, licensed clinical social worker, licensed professional counselor, licensed master's level social worker, or licensed marriage and family therapist, who is so designated by the governing body. The mental health program director is responsible for providing mental health counseling, treatment, and services provided to clients and for supervising mental health counseling, treatment, and services provided by mental health clinical staff. The mental health program director, administrator, ~~lead nurse~~ **director of nursing**, and medical director may be the same individual. (3-29-10)()

~~14.~~ **MIS.** ~~The Department's computerized management information system designed to collect individual demographics and service information on persons who are suffering from a subacute psychiatric or alcohol/drug crisis.~~ (3-29-10)

~~153.~~ **Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Unit.** A facility referred to in this rule as a “detox/mental health diversion unit,” means a freestanding residential treatment facility, approved by the Department of Health and Welfare under these rules and minimum standards. Facilities owned, operated, or under the custody, control, or jurisdiction of the Department of Correction, Department of Juvenile Corrections, or state, city, or county law enforcement are excluded from this definition and are not required to meet these rules and minimum standards. (3-29-10)

~~164.~~ **On-Call.** The scheduled state of availability to return to duty, work ready, within a specified period of time. (3-29-10)

~~175.~~ **On-Duty.** Being awake, and actively carrying out assigned duties in the facility. (3-29-10)

~~186.~~ **Owner.** An individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, having legal ownership of the facility as an operating business, regardless of who owns the real property. **An operator is synonymous with owner.** (3-29-10)()

~~197.~~ **Physical Restraint.** An apparatus that physically prevents a client from doing what he might do voluntarily on his own including “safety belts.” The term “physical restraint” is synonymous with the term “mechanical restraint.” (3-29-10)

~~2018.~~ **Physician.** An individual who holds a license issued by the Idaho State Board of Medicine under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, “Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho.” (3-29-10)

~~219.~~ **Provisional Certificate of Approval.** Pending satisfactory correction of all deficiencies, a certificate of approval issued for a period not to exceed six (6) months to a facility that is not in substantial compliance with these rules and minimum standards. A facility will not be issued more than one (1) provisional certificate of approval in any two (2) year period. (3-29-10)

220. **Psychiatrist.** An individual licensed by the Idaho State Board of Medicine to practice medicine under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, “Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery,” who is certified by the American Board of Psychiatry and Neurology in psychiatry. (3-29-10)

231. **Psychologist.** An individual licensed by the Idaho State Board of Psychology to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners.” (3-29-10)

22. Qualified Substance Use Disorders Professional. A qualified substance use disorders professional includes individuals with the following qualifications: ()

a. Idaho Board of Alcohol/Drug Counselor Certification – Certified Alcohol/Drug Counselor: ()

b. Idaho Board of Alcohol/Drug Counselor Certification – Advanced Certified Alcohol/Drug Counselor: ()

c. Northwest Indian Alcohol/Drug Specialist Certification – Counselor II or Counselor III: ()

d. National Board for Certified Counselors (NBCC) – Master Addictions Counselor (MAC): ()

e. “Licensed Clinical Social Worker” (LCSW) or a “Licensed Masters Social Worker” (LMSW) licensed under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the State Board of Social Work Examiners”; ()

f. “Marriage and Family Therapist” or “Associate Marriage and Family Therapist,” licensed under Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists”; ()

g. “Nurse Practitioner” licensed under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing”; ()

h. “Clinical Nurse Specialist” licensed under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing”; ()

i. “Physician Assistant” licensed under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, “Rules for the Licensure of Physician Assistants”; ()

j. “Licensed Professional Counselor” (LPC) or a “Licensed Clinical Professional Counselor” (LCPC) licensed under Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists”; ()

k. “Psychologist” or “Psychologist Extender” licensed under Title 54, Chapter 23, Idaho Code, and IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners”; ()

l. “Physician” licensed under Title 54, Chapter 18, Idaho Code; and ()

m. “Licensed Registered Nurse (RN)” licensed under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” ()

243. **Serious Mental Illness (SMI).** Means any of the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Text Revision (DSM-~~IV-TR~~5), incorporated in Section 004 of these rules: (3-29-10)()

a. Schizophrenia- spectrum and other psychotic disorders: (3-29-10)()

- ~~b.~~ ~~*Paranoia and other psychotic disorders.*~~ ~~(3-29-10)~~
- ~~e.~~ Bipolar disorders (mixed, manic and depressive); (3-29-10)
- ~~d.~~ Major depressive disorders (single episode or recurrent); (3-29-10)
- ~~e.~~ ~~*Schizoaffective disorders.*~~ ~~(3-29-10)~~
- ~~f.~~ Obsessive-compulsive disorders. (3-29-10)

~~254.~~ **Serious and Persistent Mental Illness (SPMI).** A primary diagnosis under DSM-~~IV~~ ~~TR~~5 of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Psychotic Disorder Not Otherwise Specified (NOS) for a maximum of one hundred twenty (120) days without a conclusive diagnosis. The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following functional areas in the last six (6) months: ~~(3-29-10)~~ ()

- a. Vocational or education, or both. (3-29-10)
- b. Financial. (3-29-10)
- c. Social relationships or support, or both. (3-29-10)
- d. Family. (3-29-10)
- e. Basic daily living skills. (3-29-10)
- f. Housing. (3-29-10)
- g. Community or legal, or both. (3-29-10)
- h. Health or medical, or both. (3-29-10)

~~265.~~ **Social Worker.** An individual licensed by the Idaho State Board of Social Work Examiners to practice social work in Idaho under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the Idaho State Board of Social Worker Examiners.” (3-29-10)

~~276.~~ **Substantial Compliance.** Substantial compliance means complying with the minimum standards and requirements of these rules, and the absence of any state or condition that could endanger the health, safety, or welfare of any client, employee, contractor, occupant, or volunteer. (3-29-10)

012. -- 099. (RESERVED)

CERTIFICATE OF APPROVAL REQUIREMENTS
(Sections 100 - 199)

100. CERTIFICATE OF APPROVAL.

01. Purpose. The purpose of a certificate of approval issued by the Department is to assure, insofar as is reasonably practicable, that the care, services, treatment, and physical surroundings of each detox/mental health diversion unit are in substantial compliance with this chapter. The issuance of a certificate of approval does not guarantee adequacy of individual care, treatment, personal safety, fire safety, or the well-being of any client, employee, contractor, volunteer, or occupant of a facility. (3-29-10)

02. Valid Certificate of Approval. Under Sections 39-304, 39-305, 39-311, 39-3133, and 56-1003, Idaho Code, no individual, firm, partnership, association, corporation, or governmental unit, acting separately or

jointly, can operate, establish, manage, conduct, or maintain, directly or indirectly, a detox/mental health diversion unit without a valid certificate of approval issued by the Department. (3-29-10)

a. No client may be admitted to, or cared for in, a detox/mental health diversion unit until a certificate of approval is issued by the Department. (3-29-10)

b. The application must include, at a minimum, all of the information, items, documents, and materials identified in Section 105 and 110 of these rules. Additional requirements found in the remainder of these rules must be supplied in a timely manner and prior to at least ninety (90) days prior to the planned opening date. (3-29-10)()

~~03. **Maximum Allowable Number of Beds.** A certificate of approval will specify the maximum allowable number of beds for detoxification, sobering, and mental health. Facilities are prohibited from exceeding the maximum allowable number of beds for detoxification, sobering, and mental health as stated on the certificate of approval. (3-29-10)~~

~~04. **Apply for Certificate of Approval.** In addition to obtaining prior written approval of actual construction drawings, plans, and specifications in accordance with Section 600 through 699 of these rules, each individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, planning to operate or maintain a detox/mental health diversion unit must apply for a certificate of approval on forms provided by the Department. (3-29-10)~~

a. The application and application fee must be submitted to the Department at least ninety (90) days prior to the planned opening date. The application must contain information required by the Department which includes affirmative evidence of the facility's ability to comply with these rules. (3-29-10)

b. Upon receipt of a completed application, the Department has up to sixty (60) days to notify the applicant of its determination. (3-29-10)

101. -- 104. (RESERVED)

105. AGREEMENTS REQUIRED FOR CERTIFICATE OF APPROVAL FOR A DETOX/MENTAL HEALTH DIVERSION UNIT FACILITY.

Each detox/mental health diversion unit must have and maintain at all times formal written agreements as provided in Subsections 105.01 through 105.05 of this rule before a certificate of approval can be issued. An individual filling more than one (1) of the following positions, must meet the qualifications under these rules for each position being filled by the individual. (3-29-10)

01. Agreement with Licensed Hospital Required. A formal written agreement must be maintained at all times for the provision of emergency medical services and ambulatory medical services with one (1) or more licensed hospitals serving the area in which the facility is located. The agreement must provide, at a minimum, for: (3-29-10)

a. Laboratory, x-ray, and other diagnostic services not otherwise available at the facility; (3-29-10)

b. Hospitalization for acutely ill clients; (3-29-10)

c. Specify hospital consents to accept all transfers for prompt medical evaluation, treatment, and admission; and (3-29-10)

d. Assurances for the exchange of information for clients. (3-29-10)

02. Agreement with CEO or Administrator. A formal written agreement must be maintained at all times with a qualified professional who is employed or contracted to serve as the CEO or administrator. The CEO or administrator is responsible for the day-to-day operations of the facility. (3-29-10)

03. Agreement with Medical Director. A formal written agreement must be maintained at all times

with a qualified physician licensed in Idaho, who is employed or contracted to serve as the medical director. The medical director is responsible for the medical care provided to clients and for supervising all medical care, services, and treatment provided by the medical staff. (3-29-10)

04. Agreement with ~~Lead-Nurse~~ Director of Nursing. A formal written agreement must be maintained at all times with a qualified R.N. licensed in Idaho, who is employed or contracted to serve as the ~~lead nurse~~ director of nursing. The ~~lead-nurse~~ director of nursing is responsible for nursing care provided to clients and for supervising the nursing care, and services provided by staff. ~~(3-29-10)~~()

05. Agreement with Mental Health Program Director. A formal written agreement must be maintained at all times with a qualified professional licensed in Idaho, who is employed or contracted to serve as the Mental Health Program Director. The Mental Health Program Director is responsible for providing mental health counseling, treatment, and services to clients and for supervising mental health counseling, treatment and services provided by the mental health staff. (3-29-10)

~~**06. Agreement with Chemical Dependency Counselor.** A formal written agreement must be maintained at all times with a qualified professional counselor licensed in Idaho who is employed or contracted as a chemical dependency counselor. The chemical dependency counselor is responsible for developing an individualized treatment plan based on the treatment needs assessment for each client admitted to the detoxification unit or mental health unit, and for supervising all chemical dependency counseling provided by staff. (3-29-10)~~

106. -- 109. (RESERVED)

110. APPLICATION FOR CERTIFICATE OF APPROVAL.

01. Completed and Signed Application. The applicant must apply for a certificate of approval on forms provided by the Department, and must provide all of the information requested by the Department. Forms for a certificate of approval are available upon written request, or online at <http://www.healthandwelfare.idaho.gov>. (3-29-10)

02. Initial Application and Building Evaluation Fee. The applicant must make a request in writing for a certificate of approval and evaluation of existing buildings. The request must include: (3-29-10)

- a. The physical address of the buildings that are to be evaluated; (3-29-10)
- b. The name, address, and telephone number of the individual who is to receive the Department's determination and evaluation report; and (3-29-10)
- c. A nonrefundable ~~five~~ one hundred (\$~~51~~100) dollar application and building evaluation fee. No application will be processed until the application fee is paid. ~~(3-29-10)~~()

03. Statement to Comply. The applicant must provide a written statement that the applicant, owner, operator, proposed CEO or administrator, proposed medical director, proposed ~~lead-nurse~~ director of nursing, and proposed mental health program director have thoroughly read, reviewed, and are prepared to comply with the provisions in IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Units." ~~(3-29-10)~~()

04. Statement Disclosing Revocation or Disciplinary Actions. The applicant must provide a written statement regarding the applicant, owner, proposed CEO or administrator, proposed medical director, proposed ~~lead nurse~~ director of nursing, and proposed mental health program director that either: ~~(3-29-10)~~()

- a. Discloses any revocation or other disciplinary action taken against, or in the process of being taken against any of them, in Idaho or any other jurisdiction; or (3-29-10)
- b. Affirms that no revocation or other disciplinary action has been taken against, or is in the process of being taken against any of them, in Idaho or any other jurisdiction. (3-29-10)

05. Criminal History and Background Clearance. The applicant must provide satisfactory evidence that the owner, applicant, all employees, transfers, reinstated former employees, student interns, contractors, volunteers, and any other individuals who provide care or services, or have access to clients, have successfully completed and received a clearance for a criminal history and background check that complies with Section 009 of these rules. (3-29-10)

06. Electrical Inspection. The applicant must provide a written statement from a licensed electrician or the local or state electrical inspector that all wiring in the facility complies with current electrical code as incorporated by reference in Section 004 of these rules. (3-29-10)

07. Public Health District. The applicant must provide a current written statement from the local health district that confirms the facility meets the local health codes for occupancy, and if the facility is not on a municipal water supply or sewage disposal system, that the water supply and sewage disposal system comply with these rules and are in good working order. (3-29-10)

08. Certificate of Occupancy, Fire Codes, and Building Codes. The applicant must provide a written statement from the local zoning official, local building official, and local fire official, that confirms the facility complies with local zoning, local building codes, and local fire codes for occupancy. (3-29-10)

09. Operational Policies and Procedures. The applicant must provide a complete set of operational policies and procedures as required under these rules. (3-29-10)

10. Proof of Insurance. The applicant must provide proof of insurance. Each facility must maintain medical liability insurance at a minimum of one million dollars/three million dollars (\$1,000,000/\$3,000,000), and general liability insurance at a minimum of one million/three million dollars (\$1,000,000/\$3,000,000) or equivalent insurance. Copies of the declarations policy face-sheet must be included with the application. (3-29-10)

11. Floor Plan. The applicant must provide a detailed floor plan of the facility, including measurements of all rooms, or a copy of architectural drawings. (3-29-10)

12. Purchase Agreement, Lease, or Deed. The applicant must provide a copy of the purchase agreement, lease, or deed. (3-29-10)

13. Identification of CEO or Administrator, Medical Director, ~~Lead Nurse~~ Director of Nursing, and Mental Health Program Director. The applicant must provide a written statement that identifies the CEO or administrator, medical director, ~~lead nurse~~ director of nursing, and mental health program director along with documentation that establishes compliance with Sections 271 through 273, and 275 of these rules. ~~(3-29-10)~~ ()

14. Other Information as Requested. The applicant must provide other information that may be requested by the Department for the proper administration and enforcement of these rules. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

116. EXPIRATION AND RENEWAL OF CERTIFICATE OF APPROVAL.

01. Existing Certificate of Approval. Each certificate of approval to operate a detox/mental health diversion unit will expire on the date designated on the certificate of approval, unless suspended or revoked prior to the certificate's expiration date. (3-29-10)

02. Renewal of Certificate of Approval. To renew a certificate of approval, the individual or governmental unit named on the certificate must submit a written request for renewal on a form approved by the Department at least ninety (90) days prior to the expiration of the certificate. The Department has up to thirty (30) days after receiving a completed renewal application to notify the applicant of its determination. (3-29-10)

03. Annual Renewal Fee. An ~~annual~~ nonrefundable fee of ~~ninety-six~~ **one hundred** (\$~~96~~**100**) dollars ~~per~~

~~bed~~ must be submitted with the renewal application for certificate of approval. ~~This per bed annual renewal fee will be adjusted from time to time to cover the cost of licensing, enforcing, and regulating in accordance with these rules and minimum standards.~~ (3-29-10)()

117. CERTIFICATE OF APPROVAL DURATION.

A certificate of approval is effective for three (3) years from the date the Department issues the Certificate of Approval. The detox/mental health diversion unit's Certificate of Approval is subject to the unit maintaining compliance with these rules. ()

118. DETOX/MENTAL HEALTH DIVERSION UNIT - DEEMING.

01. National Accreditation. The Department will deem a nationally accredited detox/mental health diversion unit to be in compliance with the minimum standards and rule requirements in these rules as long as the national standards meet or exceed the standards of these rules. ()

02. Proof of Accreditation. The applicant must submit a copy of accreditation results and reports regarding accreditation from the accrediting agency with their application. ()

03. Additional and Supplemental Information. To address requirements for a state-approved detox/mental health diversion unit, the Department may require an applicant to provide additional or supplemental information not covered under the national accreditation or certification requirements. Additional documents may include: ()

a. An organizational chart with verification that staff meet minimum certification standards; ()

b. Satisfactory evidence that a criminal history and background check clearance, or waiver, has been issued by the Department for each individual required in Section 009 of these rules to have a criminal history check or whose position requires regular contact with clients. ()

~~117.~~—119. (RESERVED)

120. ISSUANCE OF CERTIFICATE OF APPROVAL BY DEPARTMENT.

Upon completion of the application process, the Department may take any of the following actions in Subsections 120.01 through 120.03 of this rule. (3-29-10)

01. Issue ~~Full Accreditation~~ Certificate of Approval. Issue a ~~full accreditation~~ certificate of approval for a period of ~~one~~ three (~~1~~ 3) years if a facility is in substantial compliance with these rules and minimum standards. (3-29-10)()

02. Issue Provisional Certificate. Issue a provisional certificate of approval for a period of six (6) months when a facility is not in substantial compliance with these rules and minimum standards. This provisional certificate is contingent on an approved plan to correct all deficiencies prior to the expiration of the provisional certificate being provided to the Department by the facility. A facility will not be issued more than one (1) provisional certificate of approval in any two-year period. (3-29-10)

03. Deny Certificate. The Department may ~~D~~deny a certificate of approval if it is determined that the detox/mental health diversion unit does not meet the requirements of these rules. The applicant will be notified of the denial, and the application returned with written recommendations for correction and completion of the recommendations. (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

130. CHANGES REQUIRING NOTIFICATION TO THE DEPARTMENT.

A detox/mental health diversion unit must notify the Department if any of the following changes in Subsections 130.01 through 130.05 of this rule occurs. (3-29-10)

01. Change of Ownership, Operator, or Location. The owner must notify the Department when there is a change of ownership, operator, or location. A new application for a certificate of approval must be submitted to the Department at least ninety (90) days prior to the proposed date of the change. (3-29-10)

02. Change of Ownership, Operator, or Location Due to Facility in Litigation. An application for a certificate of approval that is being suspended or revoked and a change of ownership, operator, or location due to a facility in litigation for failure to comply with these rules, must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. An entity purchasing a facility with an enforcement action acquires the enforcement action. (3-29-10)

03. Change of CEO or Administrator, Medical Director, or ~~Lead Nurse~~ Director of Nursing. Any facility issued a certificate of approval must notify the Department in writing as soon as practicable prior to any the following changes in Subsections 130.03.a. through 130.03.c of this rule, to permit the Department to determine whether any changes in certification status are necessary: ~~(3-29-10)~~()

- a. Change in CEO or administrator; (3-29-10)
- b. Change in medical director; (3-29-10)
- c. Change in ~~lead nurse~~ director of nursing; or ~~(3-29-10)~~()
- d. Change in mental health program director. (3-29-10)

04. Change in Services or Closure of Facility. A facility issued a certificate of approval must notify the Department in writing at least thirty (30) days prior to any of the following changes to permit the Department to determine whether any changes in certification status are necessary: (3-29-10)

- a. Material change in services or program classifications provided by the facility; or (3-29-10)
- b. Closure of the facility. (3-29-10)

05. Change in Maximum Allowable Number of Beds. A facility issued a certificate of approval must notify the Department in writing at least thirty (30) days prior to any proposed increase in the maximum allowable number of beds for detoxification, sobering, or mental health. (3-29-10)

131. NOTIFICATION BY THE DEPARTMENT FOR PROPOSED CHANGES SUBMITTED BY THE FACILITY.

01. Notification on Submitted Applications for Proposed Changes. The Department will notify the owner or operator of its determination with respect to a proposed change in ownership, operators, or location, within sixty (60) days of the submission of the application for the change as provided in Section 130 of these rules. (3-29-10)

~~**02. Notification of Changes in Maximum Number of Beds.** The Department will notify the owner or operator within thirty (30) days of its determination with respect to the proposed changes in the maximum allowable number of beds for detoxification, sobering, and mental health for the facility. (3-29-10)~~

~~**03.**~~ **Notification of Changes in Operations.** The Department will notify the owner or operator within thirty (30) days of its determination with respect to any of the following proposed changes: (3-29-10)

- a. Change of CEO or administrator; (3-29-10)
- b. Change of medical director; (3-29-10)
- c. Change of ~~lead nurse~~ director of nursing; ~~(3-29-10)~~()

- d. Change of mental health program director; and (3-29-10)
- e. Material change in services or program classifications. (3-29-10)

132. -- 149. (RESERVED)

150. DENIAL OF CERTIFICATE OF APPROVAL.

01. Denial of a Certificate of Approval for Lack of Substantial Compliance. The Department may deny a certificate of approval when persuaded by a preponderance of the evidence that the facility is not in substantial compliance with these rules and minimum standards. (3-29-10)

02. Denial of a Certificate of Approval Related to Key Individuals. The Department may deny a certificate of approval when persuaded by a preponderance of the evidence that any of the following individuals: applicant, owner, operator, CEO or administrator, medical director, ~~lead nurse~~ director of nursing, or mental health program director has: ~~(3-29-10)~~()

- a. Violated any conditions of a certificate of approval; (3-29-10)
- b. Willfully misrepresented or omitted material information on the application or other documents pertaining to obtaining or renewing any certificate of approval; (3-29-10)
- c. Been found guilty of fraud, gross negligence, abuse assault, battery, or exploitation of children or vulnerable adults; (3-29-10)
- d. Been denied or has had revoked any license or certificate issued by the Department or under Title 54, Idaho Code; (3-29-10)
- e. Been convicted of operating any facility without a certificate of approval; (3-29-10)
- f. Been enjoined from operating any facility; (3-29-10)
- g. Been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or infraction; or (3-29-10)
- h. Directly been under the control or influence of any person who is described in Subsections 150.02.a. through 150.02.g. of this rule. (3-29-10)

03. Denial of a Certificate of Approval for an Act Adversely Affecting Welfare of Client, Employee, Contractor, or Volunteer. The Department may deny a certificate of approval when persuaded by a preponderance of the evidence that any act or omission adversely affecting the welfare of any client, employee, contractor, or volunteer is being permitted, aided, performed, or abetted by the facility, applicant, owner, operator, CEO or administrator, medical director, ~~lead nurse~~ director of nursing, or mental health program director. Such acts or omissions include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights or exploitation of vulnerable adults. ~~(3-29-10)~~()

(BREAK IN CONTINUITY OF SECTIONS)

160. ENFORCEMENT ACTION FOR SUSPENSION OR REVOCATION OF A CERTIFICATE AND LIMIT ON ADMISSIONS WITH NOTICE.

The Department may suspend or revoke a certificate of approval, terminate or limit admissions, with or without a referral of clients, when persuaded by a preponderance of the evidence, that the facility is not in substantial compliance with these rules and minimum standards. Additional causes for suspension or revocation of a certificate of approval, for terminating or limiting admissions, with or without a referral of clients, may be issued for any of the reasons listed in this section of rule. (3-29-10)

01. Act Adversely Affecting Welfare of Client. Any act or omission adversely affecting the welfare of any client, employee, contractor, or volunteer is being permitted, aided, performed, or abetted by the facility, applicant, owner, operator, CEO or administrator, medical director, ~~lead-nurse~~ director of nursing, or mental health program director. Such acts or omissions may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights or exploitation of vulnerable adults. (3-29-10)()

02. Endangerment to Health and Safety. Any state or condition exists at the facility which endangers the health or safety of any client. (3-29-10)

03. Misrepresentation or Omission on Application. The applicant, owner, operator, CEO or administrator, medical director, ~~lead-nurse~~ director of nursing, or mental health program director has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining or renewing a license. (3-29-10)()

04. Lack of Sound Judgment in Operation or Management. The applicant, owner, operator, CEO or administrator, medical director, ~~lead-nurse~~ director of nursing, or mental health program director has demonstrated a lack of sound judgment in the operation or management of the facility. (3-29-10)()

05. Substantiated Deficiencies. The facility has one (1) or more substantiated deficiencies as demonstrated by any one (1) of the following: (3-29-10)

a. Any deficiency that endangers the health and safety of any client, employee, contractor, or volunteer. (3-29-10)

b. Repeat violations of any requirement of these rules and minimum standards or of Idaho law. (3-29-10)

c. An accumulation of minor violations that when taken as a whole, would constitute a substantial deficiency. (3-29-10)

06. Lack of Adequate Staffing. The facility lacks adequate staff to properly care for the number and type of clients receiving care and treatment at the facility. (3-29-10)

07. Acts of Key Individuals. The facility, applicant, owner, CEO or administrator, medical director, ~~lead-nurse~~ director of nursing, or mental health program director: (3-29-10)()

a. ~~Has~~ Violated any conditions of a certificate of approval. (3-29-10)()

b. Willfully misrepresented or omitted material information on the application or other documents pertaining to obtaining or renewing any certificate of approval; ()

c. Been found guilty of fraud, gross negligence, abuse assault, battery, or exploitation of children or vulnerable adults; ()

d. ~~Has~~ Been denied or has had revoked any license issued under Title 54, Idaho Code, or by the Department; (3-29-10)()

e. ~~Has~~ Been convicted of operating any facility without a license; (3-29-10)()

f. ~~Has~~ Been enjoined from operating any facility; (3-29-10)()

g. Been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or infraction; or ()

h. ~~Is~~ Directly under the control or influence of any person who has been subject to the proceedings described in this Subsection of these rules; or (3-29-10)()

~~f.~~ ~~Fails to comply with the data gathering requirements of the MIS; or~~ ~~(3-29-10)~~

~~g.i.~~ Fails to substantially comply with these rules and minimum standards. (3-29-10)

08. Violation of Client Confidentiality. The applicant, owner, operator, CEO or administrator, medical director, ~~lead nurse~~ **director of nursing**, mental health program director, or any employees, transfers, reinstated former employees, student interns, contractors, volunteers, or any other persons who provide care or services or have access to clients, violate client confidentiality. ~~(3-29-10)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

166. -- ~~169~~**74.** (RESERVED)

~~**170. PENALTY FOR OPERATING A FACILITY WITHOUT A CERTIFICATE OF APPROVAL.**~~

~~**01. Penalty for Operating Facility Without a Certificate of Approval.** Any person or entity establishing, conducting, managing, or operating a detox/mental health diversion unit without a certificate of approval issued by the Department is guilty of a misdemeanor. When a person is found guilty, the penalty is punishable by imprisonment in a county jail for a period of time not to exceed six (6) months, or by a fine not to exceed three hundred dollars (\$300), or both fine and imprisonment. Each day of continuing violation constitutes a separate offense. Under Section 39-1312, Idaho Code, the attorney general is authorized to prosecute any violations in the event the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the violation. (3-29-10)~~

~~**02. Injunction to Prevent Operation Without a Certificate of Approval.** Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law maintain an action in the name of the State for injunctive relief or other process against any person or entity establishing, conducting, managing, or operating a detox/mental health diversion unit without a certificate of approval issued by the Department. (3-29-10)~~

~~**171. PENALTY FOR OPERATING FACILITY NOT IN SUBSTANTIAL COMPLIANCE.**~~

~~**01. Civil Monetary Penalties.** Civil monetary penalties are based upon one (1) or more deficiencies of substantial noncompliance. Nothing will prevent the Department from imposing this remedy for deficiencies which existed prior to inspection or complaint investigation through which they are identified. Actual harm to a client or clients does not need to be shown. A single act, omission or incident will not give rise to imposition of multiple penalties, even though such act, omission or incident may violate more than one (1) rule. (3-29-10)~~

~~**02. Assessment Amount for Civil Monetary Penalty.** When civil monetary penalties are imposed, such penalties are assessed for each day the facility is or was out of substantial compliance. The amounts below are multiplied by the total number of certified beds according to the records of the Department at the time substantial noncompliance is established. (3-29-10)~~

~~a.~~ ~~Initial deficiency is eight dollars (\$8). See following example:~~

ASSESSMENT FOR CIVIL MONETARY PENALTY - INITIAL DEFICIENCY TABLE 171.02.a				
Number of Beds	Initial Deficiency	Times Number of Days Out of Substantial Compliance	Penalty Per Day	Amount of Penalty
44	\$8	45-Days	\$88	\$3,960

~~(3-29-10)~~

~~b. Repeat deficiency is ten dollars (\$10). See following example:~~

ASSESSMENT FOR CIVIL MONETARY PENALTY - REPEAT DEFICIENCY TABLE 171.02.b				
Number of Beds	Repeat Deficiency	Times Number of Days Out of Substantial Compliance	Penalty Per Day	Amount of Penalty
11	\$10	30 Days	\$110	\$3,300

~~(3-29-10)~~

~~03. Notice of Civil Monetary Penalties and Appeal Rights. The Department will give written notice informing the facility of the amount of the penalty, the basis for its assessment, and the facility's appeal rights.~~

~~(3-29-10)~~

~~04. Payment of Penalties. The facility must pay the full amount of the penalty within thirty (30) calendar days from the date the notice is received. Interest accrues on all unpaid penalties at the legal rate of interest for judgments. Such interest accrualment will begin one (1) calendar day after the date of the initial assessment of the penalty.~~

~~(3-29-10)~~

~~05. Failure to Pay. Failure of a facility to timely pay the entire penalty, together with any interest, is cause for the Department to take any action described in Subsection 120 of these rules including but not limited to, revocation of the certificate of approval or offsetting and withholding any amounts due from Medicaid payments to the facility.~~

~~(3-29-10)~~

~~172.—174. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

185. INSPECTIONS, INVESTIGATIONS, AND CONSULTATIONS.

01. Inspections or Investigations. The Department will make or cause to be made such inspections and investigations as it deems necessary. Any holder of a certificate of approval, owner, operator, or applicant planning to alter, add to, or remodel an existing facility, to construct a new facility, or convert an existing structure is referred to Sections 600 through 699 of these rules for construction standards and review procedures that must occur prior to breaking ground or commencing any construction. (3-29-10)

02. Initial Inspection. Prior to commencing occupancy, the building or facility must be inspected and approved by the Department. The Department will make reasonable efforts to schedule an inspection within two (2) weeks of receiving a certificate of occupancy issued by the local governing authority, a city or county in Idaho or other evidence submitted by the applicant that the building or facility is ready for final inspection. (3-29-10)

03. Intervals of Inspection Following Initial Inspection. At the Department's discretion, the intervals of the inspection following the initial inspection will be at least one (1) every twelve (12) months or more frequently as needed. (3-29-10)

04. Unannounced Inspections. At the Department's discretion, inspections and investigations following the initial inspection are made unannounced and without prior notice. (3-29-10)

05. Services of Others for Inspections and Investigations. Under the provisions in these rules, the Department may use the services of any qualified person or organization, either public or private, to examine, survey, inspect, or investigate any person or entity holding a certificate of approval issued by the Department. (3-29-10)

06. Access and Authority to Enter. The Department or its designee must have full access and has the

authority to examine: quality of care, services delivery, client records, facility records, physical premises, including the condition of buildings, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with these rules. (3-29-10)

07. Authority to Interview. The Department or its designee has the authority to interview any individual associated with the facility or the provision of care, including persons or governmental units named in the certificate, the complainant, CEO or administrator, medical director, ~~lead nurse~~ director of nursing, mental health program director, ~~chemical dependency counselor~~ qualified substance use disorders professional, staff, clients, clients' families, service providers, authorized provider or physician or other legally responsible person. Interviews are confidential and conducted privately unless otherwise specified by the Department or its designee. (3-29-10)()

08. Consultations. Consultations may be provided at the option of the Department. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

**REQUIREMENTS APPLICABLE TO ALL DETOXIFICATION UNITS,
~~SOBERING STATIONS,~~ AND MENTAL HEALTH DIVERSION UNITS
(Sections 200 - 299)**

(BREAK IN CONTINUITY OF SECTIONS)

210. PERSONNEL POLICIES AND PROCEDURES.

Subject to the governing body's written approval, the CEO or administrator must establish the following policies, procedures, or plans. (3-29-10)

01. Written Policies and Procedures for Personnel. A written personnel policy concerning qualifications, responsibilities, and conditions of employment for each category of personnel must be maintained by the facility. The policy, procedures, or plans must contain at a minimum the following: (3-29-10)

- a.** The recruitment of qualified personnel, including consultants when utilized; (3-29-10)
- b.** Documentation of orientation of all employees to policies, procedures, and objectives of the facility; (3-29-10)
- c.** Competent supervision of all staff; (3-29-10)
- d.** Job descriptions for all categories of personnel and uniform rules for each classification concerning hours of work, paydays, overtime, and other related personnel matters; (3-29-10)
- e.** An ongoing, planned continuing educational program which maintains and upgrades the knowledge, skills, and abilities of the staff in relation to services provided and employee responsibilities, including the opportunity to attend outside educational programs. (3-29-10)
 - i.** A minimum of twenty-four (24) hours of training per year must be provided to staff; and (3-29-10)
 - ii.** Documentation of continuing education or in-service for all direct care personnel that is consistent with clients' needs and services offered. (3-29-10)
- f.** Employee grievance procedures. (3-29-10)
- g.** A written statement that the facility does not discriminate in employment in any manner prohibited

- by the laws of the United States or the state of Idaho. (3-29-10)
- h.** A written statement that describes the facility's policy and procedure for recruiting and hiring all employees and interns. (3-29-10)
 - i.** Staff disciplinary, suspension, and termination policies and procedures. (3-29-10)
 - j.** Those facilities using volunteers must maintain written policies and procedures concerning volunteer services. Volunteers must receive orientation in accordance with Section 215 of these rules. (3-29-10)
- 02. Daily Work Schedules.** Daily work schedules must be maintained in writing that reflect: (3-29-10)
- a.** Personnel on duty at any given time for the previous ~~twelve~~ one (12) months; ~~(3-29-10)~~ () (3-29-10)
 - b.** The first and last names of each employee, including professional designation; and (3-29-10)
 - c.** Any adjustments made to the schedule. (3-29-10)
- 03. Job Descriptions.** Each employee must be given a current job description that is consistent with his classification, be initialed by the employee, and be retained on file in each employee's personnel record. Job descriptions must contain at a minimum the following: (3-29-10)
- a.** The authority, responsibilities and duties of each classification; and (3-29-10)
 - b.** Reporting and supervisory requirements for the classification. (3-29-10)
- 04. Organizational Chart.** An organizational chart that clearly reflects lines of authority within the facility's organizational structure must be posted or made available to all employees. (3-29-10)
- 05. Applicable Idaho and Federal Laws.** Applicable Idaho and federal laws must be observed in relation to the employment of any individual. (3-29-10)
- 06. Age Limitations.** No person who is under the age of eighteen (18) years can provide direct care to clients. (3-29-10)
- 07. Payroll Records.** Payroll records must be maintained by the facility that reflect an employee's hours of work, paydays, overtime, and other related matters. (3-29-10)
- 08. Personnel Files.** Personnel files must be maintained by the facility for each employee. This file must contain at a minimum the following: (3-29-10)
- a.** An application for employment signed by the employee and a resume that must include pre-employment education, training and experience; (3-29-10)
 - b.** Copies of all certification certificates, certification identification card, and all other health care licenses or certificates related to job duties; (3-29-10)
 - c.** Copy of completed criminal history and background check; (3-29-10)
 - d.** Position and qualifications of the position for which the employee is hired, including education and experience; (3-29-10)
 - e.** Letter of hire or other documentation of the terms of employment and the employee's starting and termination date; (3-29-10)
 - f.** Orientation and training documentation reflecting what type of training the employee received and the amount of time for each program; (3-29-10)

- g. Verification of a tuberculin skin test upon employment and any subsequent test results; (3-29-10)
- h. Copies of the employee's annual written job performance evaluation reviews including: (3-29-10)
- i. Documentation of any disciplinary actions taken against the employee; and (3-29-10)
- ii. Documentation of any commendations. (3-29-10)

211. EMPLOYEE HEALTH.

Personnel policies related to employee health must include: (3-29-10)

01. Tuberculin Skin Test. The current status of a tuberculin skin test, taken immediately prior to employment or within thirty (30) days after employment, must be recorded. (3-29-10)

a. If the skin test is positive, either by history or current test, personnel must seek a medical evaluation and chest x-ray or tuberculosis blood test to determine the presence or absence of active disease. Personnel who have active tuberculosis must be restricted from employment and attendance at the facility until it is determined by laboratory evaluation that the tuberculosis is noninfectious. ~~(3-29-10)~~(____)

b. Personnel who have a negative reaction to the skin test, must be ~~tested annually if it is determined that they function in a high-risk tuberculosis area~~ given an annual tuberculosis risk assessment checklist to screen for potential symptoms and infection. Employees who are screened as high risk must be given a tuberculin skin test within thirty (30) days. If the skin test is positive, personnel must seek a medical evaluation and chest x-ray or tuberculosis blood test to determine the presence or absence of active disease. Personnel who have active tuberculosis must be restricted from employment and attendance at the facility until it is determined by laboratory evaluation that the tuberculosis is noninfectious. ~~(3-29-10)~~(____)

~~02. Repeat Skin Test. A repeat skin test is also required if an employee is exposed to a client or other staff who develop tuberculosis. (3-29-10)~~

~~03. Report Symptoms.~~ The facility must require that all personnel report immediately to their supervisor any signs or symptoms of personal illness. (3-29-10)

~~043. Policy for Communicable Disease Precautions.~~ 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 and as required by the facility's operator or contractor through its CEO or administrator. Personnel may be required: (3-29-10)

- a. Not to work until the infectious state is corrected and noninfectious; (3-29-10)
- b. To work in other areas of the facility where contact with others is not expected and the likelihood of transmission of infection is absent; or (3-29-10)
- c. To seek other remedies that will avoid spreading the infection. (3-29-10)

~~054. Documentation in Personnel File.~~ Documentation of compliance with health policy must be current, be initialed by each employee, and be retained on file in each employee's personnel file. (3-29-10)

212. -- 214. (RESERVED)

215. ORIENTATION AND CONTINUING EDUCATION.

The facility must provide a formalized, on-going educational program for all personnel, including a written structured orientation program designed to meet the training needs of new employees in relation to an employee's responsibilities. (3-29-10)

01. Documentation of Education Program. Documentation of compliance with orientation and continuing education program must be current, be initialed by each employee, and be retained on file in each employee's personnel file. (3-29-10)

02. Content for Orientation and Continuing Education Program. Orientation and continuing education in the facility must include at a minimum the following: (3-29-10)

- a. All facility policies and procedures relevant to an employee's responsibilities; (3-29-10)
- b. Basic procedures relative to client care; (3-29-10)
- c. Client rights and responsibilities; (3-29-10)
- d. Confidentiality; (3-29-10)
- e. Facility's code of ethics; (3-29-10)
- f. Use of mechanical and electrical equipment by an employee; (3-29-10)
- g. Fire safety and emergency evacuation; (3-29-10)
- h. Emergency procedures; (3-29-10)
- i. Organizational structure; (3-29-10)
- j. Measures to prevent cross infection, including aseptic and isolation techniques; (3-29-10)
- k. Special needs of the client population served; (3-29-10)
- l. Restorative care; (3-29-10)
- m. Proper maintenance and handling of client records; (3-29-10)
- n. Philosophical approach to treatment and the facility's goals; and (3-29-10)
- o. Policies and procedures for reporting cases of suspected abuse or neglect of vulnerable adults. (3-29-10)

03. Continuing Education for Direct Care Staff. Each direct care staff member must annually receive ~~twenty-four~~ **twelve** (12) hours of continuing education that includes an understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy, and other treatment methodologies that are appropriate to the position held by each direct care staff member. Continuing education requirements may be met through in-house educational programs, outside continuing educational programs, or a combination thereof.

(3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

230. POLICIES AND PROCEDURES APPLICABLE TO ALL DETOXIFICATION UNITS, ~~SOBERING STATIONS,~~ AND MENTAL HEALTH DIVERSION UNITS.

Subject to the governing body's written approval, the CEO or administrator must develop a set of physician approved written policies and procedures in accordance with these rules that are available at all times to clients, staff, and the public. (3-29-10)()

231. PHYSICIAN APPROVED ADMISSIONS POLICY, INTAKE PROCEDURES, AND DISCHARGE PLANNING.

Each detox/mental health diversion unit must have written physician-approved admission policies and procedures that at a minimum meet the following requirements in Subsections 231.01 through 231.10 of this rule. (3-29-10)

01. Admissions Policy. A client will be admitted, accepted, or retained only when the facility has the capability, capacity, and services to provide appropriate care, and the client does not require a type of service for which the facility is not approved to provide, or for which the facility does not provide or arrange for, or in which the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services. (3-29-10)

02. Criteria for Admissions. Written criteria for admissions, uniformly applied to all prospective clients, must be provided in accordance with these rules. (3-29-10)

03. Criteria for Rejecting Admissions. Written criteria for rejecting admission requests, uniformly applied to all prospective clients, must be provided in accordance with these rules, and that includes a statement that the following persons are not eligible for admission: (3-29-10)

- a. Any person who is violent, charged with a crime, or otherwise needs a secure holding facility; (3-29-10)
- b. Any person who is under the age of eighteen (18) years; (3-29-10)
- c. Any person who is the subject of involuntary commitment proceedings or detention without a hearing under Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code; (3-29-10)
- d. Any person who requires specialized care not available at the facility; (3-29-10)
- e. Any person who has a physical or medical condition that is unstable or can only be safely treated in a hospital; (3-29-10)
- f. ~~Any person whose primary problem is social, economic, or one of physical health such as epilepsy, an intellectual disability, dementia, a developmental disability, or, chronic alcoholism, drug abuse, physical disability, or aged, unless in addition to such condition, he meets the admission criteria provided in Sections 320, 420, or 520 of these rules;~~ (3-29-10)
- ~~g.~~ Any person who fails to meet the admission criteria in Sections 320, 420, or 520 of these rules; (3-29-10)
- ~~h.~~ Any person who can be safely maintained and effectively treated in a less restrictive or intensive level of care; or (3-29-10)
- ~~i.~~ Any person who does not voluntarily consent to admission or treatment. (3-29-10)

04. Intake Procedures. Written intake procedures must be provided that include a determination that the facility's services are or are not appropriate to meet the needs of the client. (3-29-10)

05. Referrals For Individuals Not Admitted. Written policies must be provided for making referrals of individuals not admitted to the facility and written policies for accepting referrals from outside facilities. (3-29-10)

06. Initial Client Assessments Procedures. Written procedures must be provided that require a completed initial client assessment on every proposed client prior to admission. (3-29-10)

07. Medical Orders. Written, verbal, and telephone orders from persons authorized to give medical orders under Idaho law and written policies and procedures established by the governing body will be accepted by the medical staff empowered to do so under Idaho law. (3-29-10)

a. Verbal and telephone orders must contain the name of the person giving the order, the first initial and last name and professional designation of the medical staff receiving the order. (3-29-10)

b. The order must be promptly signed or otherwise authenticated by the prescribing person in accordance with written policies and procedures established by the governing body. (3-29-10)

08. Services Orientation Procedures for Clients Admitted to a Detoxification Unit or Mental Health Diversion Unit. Written services orientation information must be recorded in each client's record as soon as practicable. This orientation information must include: (3-29-10)

- a. The facility's philosophical approach to treatment; (3-29-10)
- b. Information on client's rights and responsibilities while receiving services at the facility; (3-29-10)
- c. The services available; and (3-29-10)
- d. Information on the rules governing client's behavior and those infractions, if any, that may result in discharge or other disciplinary actions. (3-29-10)

~~09. *Criteria for Appropriate Rehabilitative Services. Written criteria must be provided that assures appropriate rehabilitative services are provided whereby each client is assigned a primary addiction therapist or primary mental health professional, depending upon need, who will follow the client's progress during his admission to the detoxification or mental health unit, or both. The client's progress must be documented in the client's record.*~~ (3-29-10)

~~10. **Criteria for Assuring Clients Remain in Program.** Written criteria must be provided that assures clients will remain in a medical detoxification program, *sobering program*, or mental health diversion program for the period of time deemed medically necessary and documented by the attending physician. Coercion or force cannot be used to induce any client to remain in treatment.~~ (3-29-10) ()

~~10. **Discharge Criteria and Planning.** Written criteria for discharge, uniformly applied to all prospective clients, must be established in accordance with these rules, including a procedure to screen each client for discharge planning needs.~~ (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

235. MEDICATION POLICIES AND PROCEDURES.

Each detox/mental health diversion unit must have written policies and procedures that govern the safe storage, dispensing, and administration of medication. Written policies and procedures must include at a minimum the following requirements in Subsection 235.01 through 235.07 of this rule. (3-29-10)

01. Physician's Order. Each client of a detox/mental health diversion unit must have a written order signed by a physician, a physician's standing order, or a physician's order received by phone and signed by the physician at the earliest opportunity before any medication is administered to a client. (3-29-10)

02. Administration of Medication. Medications can only be provided to a client by licensed nursing staff in accordance with written policies and procedures established by the governing body, which must include at least the following: (3-29-10)

- a. Administered in accordance with a physician's, dentists', nurse practitioner's, or physician assistant's written orders; (3-29-10)
- b. The client is identified prior to administering the medication; (3-29-10)
- c. Medications are administered as soon as possible after preparation; (3-29-10)
- d. Medications are administered only if properly identified; (3-29-10)

- e. Medications are administered by the person preparing the medication for delivery to the client; (3-29-10)
- f. Clients are observed for reactions to medications and if a reaction occurs, it is immediately reported to the on-duty nurse and ~~lead nurse~~ director of nursing; and ~~(3-29-10)~~ ()
- g. Each client's medication is properly recorded on his individual medication record. (3-29-10)
- 03. Storage and Distribution of Medication.** Storage and distribution policies and procedures must describe the following: (3-29-10)
- a. Receiving of medication; (3-29-10)
- b. Storage of medication, including assurances that all prescription drugs stored in the facility must be kept in a double locked container. Only those medications requiring refrigeration can be stored in a refrigerator; and (3-29-10)
- c. Medication distribution system to be used including assurances that medications prescribed for one client will not be administered to or by another client or employee. (3-29-10)
- 04. Disposal of Unused, Outdated, or Recalled Drugs.** Policy and procedures for documentation and disposal of unused drugs must provide assurances that no unused, outdated, or recalled drugs are kept in the facility. All unused, outdated, or recalled drugs must be disposed of in a manner that assures that they cannot be retrieved. (3-29-10)
- 05. Written Records of Disposals.** A written record of all disposals of drugs must be maintained in the facility and must include at a minimum the following: (3-29-10)
- a. A description of the drug, including the amount; (3-29-10)
- b. The client for whom the medication was prescribed; (3-29-10)
- c. The reason for disposal; and (3-29-10)
- d. The method of disposal. (3-29-10)
- 06. Medication Policies and Procedures for Staff Response.** How staff are to respond if: (3-29-10)
- a. A client refuses a medication; (3-29-10)
- b. A client misses a medication and the reasons; (3-29-10)
- c. A client medication is not available; (3-29-10)
- d. Medications are missing; (3-29-10)
- e. A client receives an incorrect medication or dosage. (3-29-10)
- 07. Written Medication Record.** Each client's medication must be properly recorded on his individual medication record by the person administering the medication. The written record must include: (3-29-10)
- a. Client's name; (3-29-10)
- b. Prescribing physician's name; (3-29-10)

- c. Description of medication, including prescribed dosage; (3-29-10)
- d. Verification in writing by staff that medication was taken, not taken, missed, not available, or refused, and the times and dates administered; (3-29-10)
- e. Method of administration; (3-29-10)
- f. Date and time of administration; (3-29-10)
- g. Injection sites; (3-29-10)
- h. Name or initial of person administering the medication; and (3-29-10)
- i. Any adverse reactions to the medication. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

245. INFECTION CONTROL.

Each detox/mental health diversion unit must develop and implement written plans consistent with recognized standards for the prevention and control of infection for both staff and clients. (3-29-10)

01. Infection Control Program. The program must include, at minimum, the following elements: (3-29-10)

- a. Methods of maintaining sanitary conditions in the facility; (3-29-10)
- b. Employee infection surveillance and actions; and (3-29-10)
- c. Isolation procedures; (3-29-10)

02. Report for Monitoring Infections. Specifics for monitoring the course of infections must include, at minimum, a prepared written quarterly report describing the status of each infection. This report must include: (3-29-10)

- a. Diagnosis; (3-29-10)
- b. Description of the infection; (3-29-10)
- c. Causative organism, if identified; (3-29-10)
- d. Date of onset; (3-29-10)
- e. Treatment and date initiated; (3-29-10)
- f. *Client's progress;* ~~(3-29-10)~~
- ~~g.~~ Control techniques utilized; and (3-29-10)
- ~~h.g.~~ Diagnostic tests employed. (3-29-10)

03. Infection Control and Prevention Procedures. There must be a written infection control procedure that includes aseptic techniques, cleaning, sanitizing, and disinfection of all instruments, equipment, and surfaces, for all departments and services where client care is delivered. (3-29-10)

246. CONTROL OF TUBERCULOSIS.

In order to assure the control of tuberculosis in the facility, there must be a planned, organized program of prevention through written and implemented procedures that are consistent with current accepted practices and include the following in Subsections 246.01 through 246.05 of this rule. (4-7-11)

01. Tuberculosis Risk Assessment. ~~Each client must be given a tuberculosis risk assessment checklist immediately prior to admission to screen for potential symptoms and infection. Clients who are screened as high risk must be given a tuberculin skin test prior to admission or provide proof of the results of a tuberculin skin test given within six (6) months prior to admission.~~ ()

~~02. Tuberculin Skin Tests.~~ The results of a tuberculin skin test, taken immediately prior to admission or within six (6) months prior to admission, must be established for ~~each any~~ client ~~who is screened at high risk. If the status is not known upon admission, a tuberculin skin test must be done as soon as possible.~~ (3-29-10)()

a. If the tuberculin skin test is negative, the test does not have to be repeated prior to discharge. (3-29-10)

b. If the tuberculin skin test is positive, the client must have a chest x-ray ~~or tuberculosis blood test~~ to rule out the presence of infectious pulmonary tuberculosis. (3-29-10)()

03. Protective Infection Control Techniques. If any x-ray is suggestive of infectious pulmonary tuberculosis, the facility is required to implement protective infection control techniques in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-29-10)

04. Transfer of Client Suspected or Diagnosed. Arrangements for transfer to an appropriate facility must be made for any client suspected or diagnosed with infectious pulmonary tuberculosis. These arrangements must be made in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-29-10)

05. Discharge Prior to Availability of Test Result. A client, discharged prior to sufficient time elapsing for the tuberculin skin test to be read, will be instructed regarding the appropriate time frame and protocol for return to the facility to have the tuberculin skin test read. (4-7-11)

~~05. Sobering Station Exclusion.~~ ~~The tuberculin skin tests required in Subsection 246.01 of this rule, is not required for clients receiving services from a sobering station.~~ (4-7-11)

247. -- 249. (RESERVED)

250. FOOD AND NUTRITIONAL CARE POLICIES AND PROCEDURES.

Each detox/mental health diversion unit must develop written policies and procedures for providing proper nutritional care for each client that includes procedures to follow if a client refuses food or to follow the prescribed diet. The acquisition, preparation, storage, and serving of all food and drink in a facility must comply with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (3-29-10)

01. Three Nutritious Meals Per Day. At least three nutritious meals per day and nutritional snacks, must be provided to each client present at meal times in the detoxification or mental health diversion units. No more than fourteen (14) hours may elapse between the end of an evening meal and the beginning of the morning meal. Physician approved special diets must be provided upon request by a client. Under no circumstances may food be withheld for disciplinary reasons. Menus must be reviewed and approved in advance by a registered dietitian in Idaho in accordance with the Idaho Diet Manual from the Idaho Dietetic Association. ~~Nourishments must be made available to a client in a sobering station.~~ (3-29-10)()

02. On-Site Food Service. On-site food service must comply with all provisions of IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (3-29-10)

03. Third-Party Food Service. When food service is provided by a third-party, the provider must meet all the conditions of these rules pertaining to food service and be in compliance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." Each detox/mental health diversion unit must maintain a written

agreement at all times with a food service provider containing assurances that the provider will meet all food service and dietary standards imposed by this rule. (3-29-10)

04. Reports for Sanitation and Food Service. Sanitation reports and food service reports must be maintained on file in the facility. (3-29-10)

251. -- 259. (RESERVED)

260. CLIENT RECORDS POLICIES AND PROCEDURES.

Each detox/mental health diversion unit must develop written policies and procedures to assure accurate and authentic records are maintained for each client in the facility. (3-29-10)

01. Complete and Accurate Records. Each facility must implement written policies and procedures to assure complete, accurate, and authentic records in accordance with professional standards and practices. (3-29-10)

02. ~~Responsible Staff~~ Client Record Required. ~~The CEO or administrator must designate to a staff member the responsibility for the accurate maintenance of client records. If this person is not a Registered Records Administrator (RRA) or an Accredited Records Technician (ART), consultation from such a qualified individual must be provided periodically to the designated staff person.~~ Each detox/mental health diversion unit must maintain a client record on each client. All entries into the client's record must be signed and dated. (3-29-10)(____)

03. ~~Individual Client Record~~ Content of Client Record. ~~An individual record must be maintained for each admission with all entries kept current, dated, and signed. Client records must, at a minimum, contain the following:~~ The client record must describe the client's situation at the time of admission and include the services provided, all progress notes, and the client's status at the time of discharge. At a minimum the record must contain: (3-29-10)(____)

a. ~~Client's name, date and time of admission; previous address; home telephone; sex; date of birth; place of birth; ethnicity; marital status; religious preference; usual occupation; Social Security number; branch and dates of military service; name, address, and telephone number of nearest relative or responsible person or agency; place admitted from; attending physician; and date and time of discharge.~~ The client's name, address, contact information, date of birth, gender, marital status, race or ethnic origin, next of kin or person to contact, educational level, type and place of employment, date of initial contact or admission to the unit, source of any referral, legal status including relevant legal documents, name of personal physician, record of any known drug reactions or allergies, and other identifying data as indicated; (3-29-10)(____)

b. ~~Biopsychosocial assessment, including medical history and physical examination that evaluates an individual's strengths, weaknesses, problems, and needs.~~ Any staffing notes pertaining to the client; (3-29-10)(____)

c. ~~Transfer or referral report, where applicable.~~ Any medical records obtained regarding the client; (3-29-10)(____)

d. ~~Special reports dated and signed by the person making the report such as laboratory, x-ray, social services, mental health, consultation, and other special reports.~~ Any assessments; and (3-29-10)(____)

e. ~~Individualized treatment plan based on a biopsychosocial assessment of the client's alcohol or substance use disorder treatment needs, including treatment goals based on client input.~~ The initial and updated service plans. (3-29-10)(____)

f. ~~Physician's orders containing the physician's authorization for required medications, tests, treatments, and diet. Each entry must be dated and signed or counter signed by the physician.~~ (3-29-10)

g. ~~Progress notes by physicians, nurses, therapists, social workers, and other health care personnel must be recorded indicating observations to provide a full descriptive, chronological picture of the client during his admission. The author must date and sign his entry.~~ (3-29-10)

- ~~h. The final diagnosis on discharge or cause of death, condition on discharge, and disposition signed and dated by the attending physician. (3-29-10)~~
- ~~i. Nurses' entries must include the following information: (3-29-10)~~
 - ~~i. Date, time and mode of admission; documentation of the client's general physical and emotional condition as well as mental attitude on admission. (3-29-10)~~
 - ~~ii. Medication administration record. (3-29-10)~~
 - ~~iii. Date and times of all treatments. (3-29-10)~~
 - ~~iv. Any change in the client's physical or mental status. (3-29-10)~~
 - ~~v. Any incident or accident occurring while the client is in the facility. (3-29-10)~~
 - ~~vi. The signature of the on-duty nurse for each shift indicating the assumption of responsibility for all entries made by nonprofessional nursing personnel. (3-29-10)~~

04. Maintenance of Client Records. Each detox/mental health diversion unit must develop written policies and procedures governing the maintenance, compilation, storage, dissemination, and accessibility of client records. ()

05. Retention and Destruction of Client Records. Each detox/mental health diversion unit must develop written policies and procedures governing the retention and destruction of client records. ()

(BREAK IN CONTINUITY OF SECTIONS)

270. MINIMUM STAFFING POLICIES AND PROCEDURES.

Each detox/mental health diversion unit must develop, implement, and comply with written staffing policies and procedures based on the number of beds, number of clients, client needs, services provided, and configuration of the facility as described in Subsections 270.01 through 270.06 of this rule. In a facility with both detoxification and mental health diversion units, the facility may divide a staff member's time to provide direct care in both units provided the staffing ratios for each unit are met. (3-29-10)

01. Staff Trained for Emergencies. A staff member trained to respond to fires and other natural disasters, as well as to administer emergency first aid and CPR must be on duty twenty-four (24) hours per day, seven (7) days per week. Training and annual training updates in each of these areas must be documented in personnel files. (3-29-10)

02. Direct Care Staff. The facility must have adequate nursing personnel and direct care staff in sufficient numbers to plan, administer, and provide client bedside care. At a minimum, two (2) staff, one of whom must be an R.N. or L.P.N., must be on duty twenty-four (24) hours per day, seven (7) days per week. In the absence of the ~~lead nurse~~ **director of nursing**, an R.N. or L.P.N. must be designated to assume the ~~lead nurse~~ **director of nursing's** duties. No person may be assigned nursing duties, including aides and orderlies, who has been on duty in the facility during the preceding twelve (12) hours, except in an emergency. (3-29-10)()

03. Monthly Staffing Pattern. Monthly staffing patterns indicating daily staff, staff titles, and client census must be kept for the previous ~~twelve~~ **one** (12) months. A written staffing plan must be developed to ensure appropriate and adequate staff coverage for emergency or high demand situations. (3-29-10)()

04. ~~Clinical Supervision and Consultation for~~ Staff **Supervision. A written staffing plan that specifies a minimum of one (1) hour per month of personal clinical supervision and consultation for each staff person and volunteer who is responsible for the delivery of direct care services must be maintained. The clinical supervision must**

~~relate to the individual's skill level with the objective of assisting direct care staff and volunteers to increase their treatment skill and the quality of services delivered to clients.~~ Each detox/mental health diversion unit must ensure that: (3-29-10)()

a. Staff have access to regularly scheduled supervision with detox/mental health diversion unit supervisors: and ()

b. Staff members practice only within the scope of their credentials. ()

~~05. Staffing of Certified Alcohol and Drug Counselor~~ Clinical Supervision. ~~The services of a certified alcohol and drug counselor must be available to each client.~~ Each detox/mental health diversion unit must provide for regular and ongoing supervision of clinical activities. The detox/mental health diversion unit must establish a written supervisory protocol that addresses: (3-29-10)()

a. Management and oversight of the provision of professional services offered by the detox/mental health diversion unit; and ()

b. Supervision centered on the evaluation and improvement of clinician skills, knowledge, and attitudes. ()

06. Staff Trained in Substance Abuse Withdrawal. The facility, at a minimum, must have at least one (1) staff member on duty twenty-four (24) hours per day, seven (7) days per week trained in the following areas: (3-29-10)

a. Substance abuse withdrawal symptoms, including delirium tremens; and (3-29-10)

b. Symptoms of secondary complications to substance abuse. (3-29-10)

271. QUALIFICATIONS AND RESPONSIBILITIES FOR CEO OR ADMINISTRATOR.

01. CEO or Administrator. Each detox/mental health diversion unit must maintain at all times, through employment or contract, a CEO or administrator who is responsible for carrying out the policies established by the governing body and the day-to-day conduct and operations of the facility. ~~This individual must have the qualifications required in Subsections 271.03 and 271.04 of this rule at the time of hire and throughout the duration of employment or contract.~~ (3-29-10)()

02. CEO's or Administrator's Responsibilities. The CEO or administrator is responsible for assuring that policies, procedures, conduct and operations required by Title 39, Chapter 3, Idaho Code, Title 39, Chapter 31, Idaho Code, and IDAPA 16.07.50, "Rules and Minimum Standards Governing Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Units," are developed and implemented. (3-29-10)

~~**03. Required License or Degree.** Each CEO or administrator of a Detox/Mental Health Diversion Unit must, at a minimum, have one (1) or more of the following Idaho licensures or degrees at the time of hire or contract and throughout the duration of employment or contract:~~ (3-29-10)

~~**a.** Licensed Physician;~~ (3-29-10)

~~**b.** Licensed Psychologist;~~ (3-29-10)

~~**c.** Licensed Master's Level Nurse;~~ (3-29-10)

~~**d.** Licensed Clinical Professional Counselor (LCPC);~~ (3-29-10)

~~**e.** Licensed Clinical Social Worker (LCSW);~~ (3-29-10)

~~**f.** Licensed Professional Counselor (LPC);~~ (3-29-10)

- ~~g. Licensed Master's Level Social Worker (LMSW); (3-29-10)~~
- ~~h. Licensed Bachelor's Level Nurse; or (3-29-10)~~
- ~~i. Master's degree in the field of alcoholism, substance use disorders, or mental health. (3-29-10)~~
- ~~**04. Required Experience and Abilities.** Each CEO or administrator of a detox/mental health diversion unit must, at a minimum have and demonstrate the following experience and abilities at the time of hire or contract: (3-29-10)~~
 - ~~a. At least two (2) years of paid full-time experience must be in the field of alcoholism, substance use disorders and mental health. (3-29-10)~~
 - ~~b. At least one (1) year of the two (2) years' full-time experience must be in an administrative capacity that includes knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting. (3-29-10)~~
- ~~**05. Availability of CEO or Administrator.** The facility's CEO or administrator must, at a minimum, be full-time forty (40) hours per week to provide for safe and adequate care of clients and staff. The facility's CEO or Administrator, or his designee must be available to be on-site at the facility within two (2) hours and must be on-call at all times. (3-29-10)~~

272. QUALIFICATIONS AND RESPONSIBILITIES FOR MEDICAL DIRECTOR.

- 01. Medical Director.** Each detox/mental health diversion unit must maintain at all times through employment, or contract a medical director who is responsible for providing medical care to clients and for supervising all medical care, services, and treatment provided by the medical staff. This individual must have the qualifications required in Subsections 272.03 and 272.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-29-10)
- 02. Medical Director's Responsibilities.** The medical director's responsibilities include, at a minimum, the following: (3-29-10)
 - a. The provision of advice on health-related policies and issues; (3-29-10)
 - b. The provision of emergency medical care to admitted clients; (3-29-10)
 - c. The supervision of the performance of the medical examination and laboratory tests required upon the client's admission and the evaluation of the resultant test results; and (3-29-10)
 - d. The supervision of the medical treatment provided to clients. (3-29-10)
- 03. Required License.** Each medical director of a detox/mental health diversion unit must be a licensed physician by the Idaho Board of Medicine at the time of hire or contract and throughout the duration of employment or contract. (3-29-10)
- 04. Required Experience and Abilities.** Each medical director of a detox/mental health diversion unit must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract: (3-29-10)
 - a. At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders and mental health. (3-29-10)
 - b. At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting which includes: (3-29-10)
 - i. Assessment of the likelihood of danger to self or others, grave disability, capacity to give informed

consent, and capacity to understand legal proceedings; (3-29-10)

ii. Diagnosis using DSM-~~IV-TR~~5 criteria; and (~~3-29-10~~)()

iii. Treatment of mental health disorders including knowledge of treatment modalities and experience applying treatment modalities in a clinical setting. (3-29-10)

d. At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that includes: (3-29-10)

i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-29-10)

ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-29-10)

05. Availability of Medical Director. The facility's medical director or his designee must be available to be on-site at the facility within two (2) hours and must be on-call at all times. (3-29-10)

273. QUALIFICATIONS AND RESPONSIBILITIES FOR ~~LEAD-NURSE~~ DIRECTOR OF NURSING.

01. ~~Lead-Nurse~~ Director of Nursing. Each detox/mental health diversion unit must maintain at all times, through employment or contract, an R.N. licensed in Idaho to serve as the ~~lead-nurse~~ director of nursing. This individual must have the qualifications required in Subsections 273.03 and 273.04 of this rule at the time of hire and throughout the duration of employment or contract. (~~3-29-10~~)()

02. ~~Lead-Nurse~~ Director of Nursing's Responsibilities. The ~~lead-nurse~~ director of nursing is responsible for all nursing services provided to clients and for supervising all of the nursing services provided by staff. The ~~lead-nurse~~ director of nursing's responsibilities include, at a minimum, the following: (~~3-29-10~~)()

a. To organize, coordinate, and evaluate nursing service functions and staff; (3-29-10)

b. To be responsible for development and implementation of client care policies and procedures; (3-29-10)

c. To select, supervise, direct, promote, and terminate nursing staff; (3-29-10)

d. To establish procedures to insure that staff licenses are valid and current; and (3-29-10)

e. To participate with the CEO or administrator and medical director in planning and budgeting for nursing care. (3-29-10)

03. Required License. Each ~~lead-nurse~~ director of nursing must be an R.N. licensed by the Idaho Board of Nursing at the time of hire or contract and throughout the duration of employment or contract. (~~3-29-10~~)()

04. Required Experience and Abilities. Each ~~lead-nurse~~ director of nursing must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract (~~3-29-10~~)()

a. At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders, and mental health. (3-29-10)

b. At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting. (3-29-10)

c. At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that

includes: (3-29-10)

i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-29-10)

ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-29-10)

05. Availability of ~~Lead Nurse~~ **Director of Nursing**. The facility's ~~lead nurse~~ **director of nursing** must, at a minimum, be full-time forty (40) hours per week. (3-29-10)()

274. ~~QUALIFICATIONS AND RESPONSIBILITIES FOR CHEMICAL DEPENDENCY COUNSELORS.~~
(RESERVED)

~~01. **Chemical Dependency Counselor.** Each detox/mental health diversion unit must maintain at all times through employment or contract a chemical dependency counselor. This individual must have the qualifications required in Subsections 274.03 and 274.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-29-10)~~

~~02. **Chemical Dependency Counselor's Responsibilities.** A chemical dependency counselor's responsibilities include at a minimum, the following: (3-29-10)~~

~~a. Case staffing; (3-29-10)~~

~~b. Individual case supervision; (3-29-10)~~

~~c. Consultation with other clinical professionals; (3-29-10)~~

~~d. Review of case record maintenance; and (3-29-10)~~

~~e. Other clinically appropriate services determined by the facility. (3-29-10)~~

~~03. **Chemical Dependency Counselor License or Certification.** Each chemical dependency counselor must be certified in Idaho to meet the standards and requirements under IDAPA 16.07.17, "Substance Use Disorders Services," at the time of hire or contract and throughout the duration of employment or contract. (3-29-10)~~

~~04. **Required Experience and Abilities.** Each chemical dependency counselor must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract: (3-29-10)~~

~~a. At least two (2) years of paid full time experience in the field of alcoholism, substance use disorders, and mental health. (3-29-10)~~

~~b. At least one (1) of the two (2) years' full time experience must be in a clinical mental health setting. (3-29-10)~~

~~e. At least one (1) of the two (2) years' full time experience must be in an administrative capacity that includes: (3-29-10)~~

~~i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-29-10)~~

~~ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-29-10)~~

~~05. **Availability of Chemical Dependency Counselor.** The facility must have at least one (1) chemical~~

~~dependency counselor, at a minimum, be full-time forty (40) hours per week.~~

~~(3-29-10)~~

(BREAK IN CONTINUITY OF SECTIONS)

295. AVAILABILITY OF ON-SITE ALCOHOL AND DRUG **SCREENING AND TESTING.**

01. **On-Site ~~Testing~~ Screening.** Each facility must have ~~testing~~ **screening** available on-site for the purpose of detecting the presence of alcohol or any controlled substances in clients. ~~(3-29-10)~~ ()

02. **Quality of ~~Tests~~ Screening.** The facility must use ~~testing~~ **screening instruments** that are ~~widely~~ recognized as possessing ~~sufficient sensitivity to detect the presence of substances in low quantities~~ **a Clinical Laboratory Improvement Amendments (CLIA) waiver.** ~~(3-29-10)~~ ()

03. ~~**Policies for Collection and Handling Specimens**~~ **Drug Screening and Testing Policies and Procedures.** ~~The facility must establish and enforce policies to govern the collection and handling of urine specimens when such testing is indicated~~ Each facility must have **policies and procedures regarding the collection, handling, testing, and reporting of drug-screening and drug-testing specimens. Policies and procedures must include elements contributing to the reliability and validity of the screening and testing process.** ~~(3-29-10)~~ ()

a. Direct observation of specimen collection (as instructed by the Medical Director); ()

b. Verification temperature; ()

c. Specific, detailed, written procedures regarding all aspects of specimen collection, specimen evaluation, and result reporting; ()

d. A documented chain of custody for each specimen collected; ()

e. Quality control and quality assurance procedures for ensuring the integrity of the process; and ()

f. Procedures for verifying accuracy when drug test results are contested. ()

04. ~~**Documentation of Test Results**~~ **Release of Results.** ~~All test results must be documented in the client's record according to the requirements of the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160 and 164, 42 U.S.C. Sections 290 dd 3 and ee 3, and 42 C.F.R., Part 2 (June 9, 1987)~~ **The facility must have a policy and procedures for releasing the results of an alcohol and drug screening or test.** ~~(3-29-10)~~ ()

05. **On-Site Testing.** A program performing on-site testing must use alcohol and drug screening tests approved by the U.S. Food and Drug Administration. ()

06. **Laboratory Used for Testing.** Each laboratory used for lab-based confirmation or lab-based testing must meet the requirements in and be approved under IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." ()

(BREAK IN CONTINUITY OF SECTIONS)

301. **REQUIRED MINIMUM STAFFING STANDARDS APPLICABLE TO DETOXIFICATION UNITS.** Each detoxification unit must develop and implement policies and procedures to provide necessary and qualified staff in sufficient numbers to assure the health and safety of clients. The program's policies must define the types and numbers of clinical, direct care, and managerial staff needed to provide clients with treatment services in a safe and therapeutic environment. Each detoxification unit must, at a minimum, meet the following standards for staffing in the detoxification unit for direct care staff. (3-29-10)

- 01. Nurse.** At least one (1) R.N. or L.P.N. must be on duty twenty-four (24) hours per day, seven (7) days per week. (3-29-10)
- 02. Direct Care Staff.** (3-29-10)
- a.** A detoxification unit with one (1) through six (6) clients must have one (1) direct care staff member on duty twenty-four (24) hours per day, seven (7) days per week. (3-29-10)
- b.** A detoxification unit with seven (7) through twelve (12) clients must have two (2) direct care staff members on duty twenty-four (24) hours per day, seven (7) days per week. (3-29-10)
- c.** A detoxification unit with thirteen (13) through eighteen (18) clients must have three (3) direct care staff members on duty twenty-four (24) hours per day, seven (7) days per week. (3-29-10)
- d.** A detoxification unit with nineteen (19) ~~clients~~ or more ~~clients~~ must have ~~at least one three (3)~~ at least one three (3) ~~additional~~ direct care staff members on duty twenty-four (24) hours per day, seven (7) days per week, ~~beyond the three (3) staff required in Subsection 301.02.e of this rule for each additional six (6) clients or fraction thereof. Based on client acuity, the Medical Director must determine and document if additional direct care staff members are needed.~~ at least one three (3) additional (3-29-10) ()
- 03. Physician Supervision.** The treatment of each client must be under the supervision of a physician. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

320. REQUIRED MINIMUM ADMISSION CRITERIA TO DETOXIFICATION UNITS.

According to physician-approved written admission criteria, policies, and procedures, each detoxification unit must develop and implement written admission criteria that are uniformly applied to all clients. (3-29-10)

- 01. Admission to Detoxification Unit.** A prospective client will be admitted or retained only if he meets the following admission criteria: (3-29-10)
- a.** Must be eighteen (18) years of age or older; (3-29-10)
- b.** Demonstrates a need for detoxification services; (3-29-10)
- c.** Has alcohol or other addictive controlled substance intake of sufficient amount and duration to create a reasonable expectation of withdrawal upon cessation of use; (3-29-10)
- d.** Is medically stable prior to admission and if seeking detoxification from alcohol has a blood alcohol level no greater than point twenty-four (.24) as measured by an accurately calibrated Breathalyzer or as determined by another equivalent laboratory test. A client who has a blood alcohol content in excess of point twenty-four (.24) may be admitted with approval granted by the medical director or his designee; (4-7-11)
- e.** ~~Meets admission criteria specifications that do not exceed ASAM Level III-7-D; and~~ (3-29-10)
- f.** Demonstrates the capacity to benefit from short-term stabilization and the services available at the facility may reduce the prospective client's acute symptoms and may prevent the client from detoxification hospitalization. (3-29-10)
- 02. Detoxification Unit Able to Provide Services.** The detoxification unit must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. The client cannot require a type of service for which the detoxification unit is not approved to provide. (3-29-10)

03. Monitoring Clients in Detoxification Unit. The level of monitoring in the detoxification unit of the client or the physical restrictions of the environment must be adequate to prevent the client from causing serious harm to self or others. (3-29-10)

~~**04. Notification of Admission of Opiate/Methadone Client.** The lead nurse must be notified that an opiate/methadone client was admitted to the detoxification unit. The name of the clinic where the client received the methadone must be documented in the client's record. (3-29-10)~~

(BREAK IN CONTINUITY OF SECTIONS)

330. REQUIRED MINIMUM TREATMENT NEEDS ASSESSMENT FOR CLIENTS OF DETOXIFICATION UNITS.

01. Client Treatment Needs Assessment. A ~~chemical dependency counselor~~ qualified substance use disorders professional, within twenty-four (24) hours of admission, or as soon as a client is able, must complete a treatment needs assessment for each client admitted to the detoxification unit. The assessment must establish the historical development and dysfunctional nature of the client's alcohol and drug abuse or dependence and must evaluate the client's treatment needs. (3-29-10)()

02. Treatment Needs Assessment Content. The treatment needs assessment must be recorded in the client's record and must include, at a minimum, the following: (3-29-10)

a. A summary of the client's alcohol or drug abuse history including substances used, date of last use, amounts used, frequency, duration, age of first use, patterns, and consequences of use; types of and responses to previous treatment, periods of sobriety, and any other information supporting any diagnostic recommendations or diagnosis made; (3-29-10)

b. A summary of the client's family, including family background, current family composition, substance use and abuse by family members, supportive or dysfunctional relationships, and other family-related issues; (3-29-10)

c. A summary of the client's educational background, including current educational status, levels of achievement, and educational problems or difficulties; (3-29-10)

d. A summary of the client's vocational and employment status including skills or trades learned, work record, and current vocational or employment problems; (3-29-10)

e. A summary of the client's past and current involvement with the criminal justice system; (3-29-10)

f. A general summary of the client's medical history including past or current major illnesses or injuries, afflictions with communicable diseases, or known health problems or needs; (3-29-10)

g. A summary of the client's financial status, including current income sources, family income, ability to pay for services, and insurance coverage; (3-29-10)

h. A social assessment of the client, including a summarization of the nature of and problems with the client's social relationships outside the family unit; (3-29-10)

i. Any history of emotional or behavioral problems, including any history of psychological or psychiatric treatment; (3-29-10)

j. A master problem list developed from client input and identified clinical problems; and (3-29-10)

k. A diagnostic summary and master problem list. (3-29-10)

331. -- 334. (RESERVED)

335. MINIMUM REQUIREMENTS FOR INDIVIDUALIZED DETOXIFICATION TREATMENT PLAN FOR CLIENTS OF DETOXIFICATION UNITS.

01. Develop Detoxification Treatment Plan. A ~~chemical dependency counselor~~ **qualified substance use disorders professional** must develop an individualized treatment plan based upon the treatment needs assessment for each client admitted to the detoxification unit. (3-29-10)()

02. Written Detoxification Treatment Plan. The individualized detoxification treatment plan must be signed and dated by both the client and the ~~chemical dependency counselor~~ **qualified substance use disorders professional**. The signature of the counselor must be followed by the counselor's credentials. (3-29-10)()

03. Client Records for Detoxification Treatment. The treatment plan must be recorded in the client's record and must include at a minimum the following: (3-29-10)

a. A statement of the client's current strengths. (3-29-10)

b. A statement of specific clinical problems to be addressed during treatment. (3-29-10)

c. A diagnostic statement and a statement of measurable treatment goals based on client input that relate to the problems identified. (3-29-10)

d. Measurable short-term objectives based on client input leading to the completion of goals including: (3-29-10)

i. Time frames for the anticipated dates of achievement or completion of each objective, or for reviewing progress towards objectives; and (3-29-10)

ii. Specification and description of the indicators to be used to assess progress based on client input. (3-29-10)

e. A description of the methods or treatment procedures proposed to assist the client in achieving the objectives, including: (3-29-10)

i. Type and frequency of services or assigned activities to be provided; (3-29-10)

ii. Referrals for needed services that are not provided directly by the facility; and (3-29-10)

f. A statement identifying the staff member responsible for facilitating the methods or treatment procedures. (3-29-10)

04. Detoxification Treatment Plan Review. The detoxification treatment plan must be reviewed by a ~~chemical dependency counselor~~ **qualified substance use disorders professional** every three (3) days and documented in each client's record. The treatment plan review must include, at a minimum, the following: (3-29-10)()

a. A statement of the client's progress or regress as it relates to the measurable goals and measurable objectives identified in the client's individualized treatment plan. (3-29-10)

b. Any additional clinical problems identified. (3-29-10)

c. A statement of the planned actions to be taken to address the identified clinical problems. (3-29-10)

336. -- 339. (RESERVED)

340. REQUIRED MINIMUM DISCHARGE PLANNING FOR CLIENTS OF DETOXIFICATION UNIT. According to physician-approved written discharge criteria, policies, and procedures, each detoxification unit must

provide each client with a discharge plan that must include, at a minimum, the following. (3-29-10)

~~01. Discharge Criteria. A client with stable vital signs and stable laboratory results can be discharged from a detoxification unit when the client meets the discharge criteria specifications of the dimensions in Level III.2-D of the Patient Placement Criteria for the Treatment of Psychoactive Substance Use Disorders of the American Society of Addiction Medicine incorporated by reference in Section 004 of these rules. (3-29-10)~~

~~02. Client Referral.~~ Each client must be referred to the appropriate level of care upon discharge which may include community resources or state substance use disorders programs. (3-29-10)

~~03.2. Discharge Summary Content.~~ The discharge summary must include: (3-29-10)

a. The reason for admission and original diagnosis; (3-29-10)

b. A summary of the client's clinical problems, course of treatment, and progress toward planned goals and objectives identified in the treatment plan; (3-29-10)

c. The reason for discharge and diagnoses at discharge; (3-29-10)

d. A continued care treatment plan and documentation of referrals made; and (3-29-10)

e. An inventory and proper accounting for all clothing and personal property returned to the client upon discharge. (3-29-10)

341. -- ~~400.99.~~ (RESERVED)

~~ADDITIONAL REQUIREMENTS APPLICABLE TO SOBERING STATIONS
(Sections 400—499)~~

~~401. REQUIRED MINIMUM STAFFING STANDARDS APPLICABLE TO SOBERING STATIONS.
Each detox/mental health diversion unit that chooses to maintain or operate a sobering station must, at a minimum, meet the following standards for staffing in the sobering station for direct care staff. (3-29-10)~~

~~01. Nurse. At least one (1) R.N. or L.P.N. must be on duty during posted hours of operation. (3-29-10)~~

~~02. Direct Care Staff. (3-29-10)~~

~~a. A sobering station with one (1) through eight (8) clients must have one (1) direct care staff member on duty during posted hours of operation. (3-29-10)~~

~~b. A sobering station with nine (9) through eighteen (18) clients must have two (2) direct care staff members on duty during posted hours of operation. (3-29-10)~~

~~c. A sobering station with nineteen (19) through thirty (30) clients must have three (3) direct care staff members on duty during posted hours of operation. (3-29-10)~~

~~d. A sobering station with more than thirty (30) clients must have one (1) additional direct care staff member beyond the three (3) staff required in Subsection 401.02.c of this rule for each additional ten (10) clients or fraction thereof during posted hours of operation. (3-29-10)~~

~~03. Physician Supervision. The services provided to each client must be under the supervision of a physician. (3-29-10)~~

~~402.—409. (RESERVED)~~

~~410. REQUIRED MINIMUM SERVICES APPLICABLE TO SOBERING STATIONS.~~

~~Each detox/mental health diversion unit that chooses to maintain or operate a sobering station must provide the following services. (3-29-10)~~

~~01. **Services to Reduce Acute Symptoms and to Monitor.** A sobering station must provide services that reduce the client's acute symptoms in a safe structured setting. (3-29-10)~~

~~02. **Planning Services on Release.** A sobering station must provide a procedure to screen each client for planning needs on release. (3-29-10)~~

~~411. — 419. (RESERVED)~~

~~420. **REQUIRED MINIMUM INTAKE CRITERIA APPLICABLE TO SOBERING STATIONS.**~~

~~Each detox/mental health diversion unit that maintains or operates a sobering station must develop and implement physician approved written intake criteria, policies, and procedures that are uniformly applied to all clients. (3-29-10)~~

~~01. **Intake to Sobering Station.** A prospective client will be accepted into or retained only if he meets the following intake criteria: (3-29-10)~~

~~a. Must be brought to the sobering station by law enforcement or referred by a hospital or other medical care provider. (3-29-10)~~

~~b. Must be eighteen (18) years of age or older; and (3-29-10)~~

~~c. Demonstrates the capacity to benefit from sobering; (3-29-10)~~

~~d. The services available in the sobering station may reduce the prospective client's acute symptoms and may prevent the client from detoxification hospitalization. (3-29-10)~~

~~02. **Sobering Station Able to Provide Services.** The sobering station must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. (3-29-10)~~

~~a. The client does not require a type of service for which the facility is not approved to provide; and (3-29-10)~~

~~b. The level of monitoring of the client in the unit or the physical restrictions of the environment of the facility are adequate to prevent the patient from causing serious harm to self or others. (3-29-10)~~

~~03. **Monitoring Clients in Sobering Station.** A client admitted to a sobering station must be closely monitored. (3-29-10)~~

~~a. Qualified staff must check each client's vital signs upon entry and throughout the client's stay in the sobering station according to the written policies and procedures approved and signed by the medical director. (3-29-10)~~

~~b. The lead nurse must be notified that an opiate/methadone client was admitted to the sobering station and the name of the clinic where the client received the methadone must be documented. (3-29-10)~~

~~421. — 424. (RESERVED)~~

~~425. **REQUIRED MINIMUM PLANNING ON RELEASE APPLICABLE TO SOBERING STATIONS.**~~

~~According to physician approved written criteria, policies, and procedures, each sobering station must provide each client with a plan on release that must include, at a minimum, the following. (3-29-10)~~

~~01. **Planning on Release.** The facility must provide a procedure to screen each client for planning needs on release. (3-29-10)~~

- ~~a. A client must be released from a sobering station according to the criteria in Subsection 425.02 of this rule. (3-29-10)~~
- ~~b. A client must be referred to the appropriate level of care upon release which may include community resources and state substance use disorders programs. (3-29-10)~~
- ~~02. **Summary on Release Content.** The summary on release must include: (3-29-10)~~
- ~~a. Documented signs of being sober such as clear speech, steady gait, clear thinking, and appropriate behavior, including stable vital signs and stable laboratory results. (3-29-10)~~
- ~~b. Documented signs that the client is able to care for self or released as sober and responsible to a third party adult. (3-29-10)~~
- ~~c. A release executed by a sober third party adult into whose care the client has been discharged, if the client is not sober, and the sober third party adult has requested and agreed to assume responsibility for the client's well being. (3-29-10)~~
- ~~d. Documentation that the client was encouraged to enter programs for ongoing recovery. (3-29-10)~~
- ~~e. An inventory and proper accounting for all clothing and personal property returned to the client upon discharge. (3-29-10)~~
- ~~426.—499. (RESERVED)~~

ADDITIONAL REQUIREMENTS APPLICABLE TO MENTAL
HEALTH DIVERSION UNITS
(Sections 500 - 599)

500. REQUIRED MINIMUM POLICY STANDARDS APPLICABLE TO MENTAL HEALTH DIVERSION UNITS.

- ~~01. **Crisis Stabilization for Mental Health Diversion Unit.** Each mental health diversion unit issued a certificate of approval under these rules must offer intensive mental health services twenty-four (24) hours per day, seven (7) days per week, to persons **eighteen (18) years of age or older** with an urgent or emergent need for crisis stabilization services in a safe, structured setting. (3-29-10)()~~
- ~~02. **Focus of Mental Health Diversion Unit.** Mental health diversion units are focused on short term stabilization for up to a maximum of seven (7) days. In order to assure that adequate arrangements are in place to allow for a safe discharge of a client, the length of stay may be extended up to twenty four (24) hours. (3-29-10)~~
- ~~03. **Alternative to Inpatient Hospitalization.** Services at this level of care are used as an alternative to inpatient hospitalization and include crisis stabilization, initial and continuing biopsychosocial assessment, care management, medication management, and mobilization of family or significant other support, and community resources. (3-29-10)~~
- ~~04. **Initial Assessment.** This level of care provides for an initial assessment by a licensed mental health professional followed by a face-to-face psychiatric evaluation within twenty four (24) hours of admission or as soon as a client is able. (3-29-10)~~
- ~~05. **Primary Diagnoses.** The primary diagnoses treated in a mental health diversion unit are active symptomatology consistent with a DSM-IV-TR diagnosis (Axes I-V) as the principle diagnosis however, patients may have additional physical, medical, or co-dependency issues. (3-29-10)~~

(BREAK IN CONTINUITY OF SECTIONS)

520. MINIMUM REQUIREMENTS FOR ADMISSION CRITERIA APPLICABLE TO MENTAL HEALTH DIVERSION UNITS.

According to physician-approved written admission criteria, policies, and procedures, each mental health diversion unit must develop and implement written admission criteria that are uniformly applied to all clients. (3-29-10)

01. Admission to Mental Health Diversion Unit. A prospective client will be admitted or retained only if he meets the following admission criteria: (3-29-10)

a. Demonstrates active symptomatology consistent with a DSM-~~IV-TR~~⁵ diagnosis (~~Axis I-IV~~) as the principle diagnosis and demonstrates significant functional impairment related to his diagnosis such as self-injurious behavior or threats, current suicidal ideation with expressed intentions or a past history of self-destructive, impulsive, or parasuicidal behavior, or grave disability; ~~(3-29-10)~~ ()

b. ~~His symptoms do not exceed Level V of LOCUS Criteria;~~ (3-29-10)

~~e.~~ Must be eighteen (18) years of age or older; and (3-29-10)

~~d.~~ Demonstrates the capacity to benefit from short-term stabilization and the services available at the facility may reduce the prospective client's acute symptoms and may prevent the client from psychiatric hospitalization. (3-29-10)

02. Mental Health Diversion Unit Able to Provide Services. The mental health diversion unit must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. The client cannot require a type of service for which the mental health diversion unit is not approved to provide. (3-29-10)

03. Monitoring Clients in Mental Health Diversion Unit. The level of monitoring the client in the mental health diversion unit or the physical restrictions of the environment of the unit must be adequate to prevent the client from causing serious harm to self or others. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

601. CODES AND STANDARDS.

Each detox/mental health diversion unit must comply with all state and local building, fire, electrical, plumbing, zoning, heating, or other applicable codes in which the facility is located and that are in effect when construction is begun. Written evidence of compliance must be kept in the facility. (3-29-10)

01. Code Conflict. In the event of a conflict between codes, the most restrictive code requirements will apply. (3-29-10)

02. Compliance with Codes and Standards. Each detox/mental health diversion unit must be in compliance with the applicable provisions of the following codes and standards in Subsection 601.02.a. through 601.02.h. of this rule. (3-29-10)

a. 2000 Edition of the Life Safety Code, including mandatory references. (3-29-10)

b. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI/ICC A117.1-2003). (3-29-10)

c. Idaho Department of Health and Welfare Rules, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," also known as the Idaho Food Code. (3-29-10)

d. National Electrical Code. ~~(3-29-10)~~ ()

e. International Fire Code. (3-29-10)

- f. Occupational Safety and Health Act of 1970 (OSHA). (3-29-10)
- g. National Sanitation Federation. (3-29-10)
- ~~h. For facilities operating a sobering station, at least one (1) airborne infection isolation room must comply with (AII) 2006 AIA Guidelines for Design and Construction of Health Care Facilities. (3-29-10)~~
- 03. Evidence of Compliance with Local Building Codes.** No facility will be approved unless the applicant provides evidence to the Department that responsible local officials (planning, zoning, and building) have approved the facility/building for code compliance. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

620. BEDS AND SLEEPING AREAS FOR MEDICALLY MONITORED RESIDENTIAL DETOXIFICATION UNIT.

Each medically monitored residential detoxification unit must be in compliance with Subsections 620.01 through 620.11 of this rule. (3-29-10)

- 01. ~~Number of Approved Beds for Detoxification Unit.~~ ~~The number of approved beds for detoxification is limited to the number stated on the certificate of approval.~~ (3-29-10)()**
- a. Each ~~approved~~ bed for detoxification must have, at a minimum, a single bed mattress in good repair with moisture-proof cover, sheets, blankets, bedspread, pillow and pillow cases. (3-29-10)()
- b. Roll-away type beds, cots, bunk-beds, and folding beds cannot be used and will not be approved. (3-29-10)
- 02. Location of Beds.** Client beds for medical detoxification may be located within an area suitable for multiple beds (“suite”), provided the suite is surrounded by solid walls, floor to ceiling, and is constructed and maintained in accordance with Chapter 18 of the 2000 Edition of the Life Safety Code. (3-29-10)
- 03. Cubicle Curtains.** Cubicle curtains of fire retardant material, capable of enclosing each approved bed must be provided in multiple-bed rooms or suites to ensure privacy for clients. (3-29-10)
- 04. Unacceptable Location of Beds.** Client beds for detoxification must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-29-10)
- 05. Numbered Beds.** Client beds for detoxification must be numbered. (3-29-10)
- 06. Square Footage Requirements.** Square footage requirements for client sleeping areas must, at a minimum, provide not less than sixty (60) square feet of floor space per client. (3-29-10)
- 07. Visibility of Client Beds.** Client beds for detoxification must be visible at all times to staff in the staff station. (3-29-10)
- 08. Occupants of Sleeping Areas.** Solid walls or movable partitions, floor to ceiling, must be used to ensure that sleeping areas and suites for detoxification are only occupied by individuals of the same sex. (3-29-10)
- 09. Safe and Secure Sleeping Areas.** Sleeping areas for detoxification must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-29-10)
- 10. Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for medically monitored detoxification are separate and distinct from client areas for ~~sobering and~~ mental health. (3-29-10)()

11. Prior Approval Needed for Reallocated or Relocated Beds. Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for detoxification cannot be reallocated or relocated unless prior written approval has been obtained from the Department. (3-29-10)

621. -- 629. (RESERVED)

630. BEDS AND BEDROOMS FOR MENTAL HEALTH DIVERSION UNIT.

Each mental health diversion unit must be in compliance with the following Subsections 630.01 through 630.14 of this rule. (3-29-10)

01. ~~Number of Approved Beds for Mental Health Diversion Unit.~~ ~~The number of approved beds for mental health diversion is limited to the number stated on the certificate of approval.~~ (3-29-10) ()

a. Each ~~approved~~ bed for mental health diversion treatment must have, at a minimum, a single bed mattress in good repair with moisture-proof cover, sheets, blankets, bedspread, pillow and pillowcases. (3-29-10) ()

b. Roll away type beds, cots, bunk beds, and folding beds cannot be used and will not be approved. (3-29-10)

02. Cubicle Curtains. Cubicle curtains of fire retardant material, capable of enclosing each approved bed must be provided in multiple-bed rooms to ensure privacy for clients. (3-29-10)

03. Maximum Room Capacity. The maximum room capacity in each bedroom is two (2) clients. (3-29-10)

04. Staff Calling System. A staff calling system for each client must be installed in each bedroom and in each toilet, bath, and shower room. A staff call must be considered an emergency call and must register at the staff station. The staff calling system must be designed so that a signal light activated by the client will remain lit until turned off by a staff member at the client's calling station - bed, bath, or shower room. The staff calling system is not a substitute for supervision. (3-29-10)

05. Location of Client Beds. Client beds must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-29-10)

06. Numbered Bedrooms and Beds. Client bedrooms and beds must be numbered. (3-29-10)

07. Size of Client Sleeping Areas. Square footage requirements for client sleeping areas must provide for not less than sixty (60) square feet of floor space per client. (3-29-10)

08. Entrances to Client Bedrooms. Entrances to each client bedroom must be visible at all times to staff in the staff station. (3-29-10)

09. Ceiling Height. Ceiling heights must be a minimum of seven (7) feet, six (6) inches. (3-29-10)

10. Occupants of Bedrooms. A client bedroom used for mental health diversion must only be occupied by individuals of the same sex. (3-29-10)

11. Bedroom Door Requirements. Each client bedroom must have a ninety-degree (90°) swinging door, at a minimum, that will not block any corridor or hallway, that is no less than thirty-two (32) inches in width, with a vision window, and that opens out directly into a corridor visible at all times to staff in the staff station. (3-29-10)

12. Safe and Secure Client Bedrooms. Each client bedroom must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-29-10)

13. **Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for mental health diversion are separate and distinct from client areas for ~~sobering and~~ medically monitored detoxification. (3-29-10)()

14. **Prior Approval Needed for Reallocated or Relocated Beds.** Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for mental health diversion cannot be reallocated or relocated unless prior written approval has been obtained from the Department. (3-29-10)

631. -- ~~634~~9. (RESERVED)

~~640. **SOBERING STATION.**~~

~~A sobering station is an optional service that may be provided in a detox/mental health diversion unit. When a sobering station is provided it must be in compliance with Subsections 640.01 through 640.16 of this rule. (3-29-10)~~

~~01. **Number of Clients in a Sobering Station.** The number of clients that may be housed in the sobering station is limited to the number stated on the certificate of approval. (3-29-10)~~

~~02. **Visible Client Areas.** Client areas for sobering must be visible at all times to staff at the staff station. If vision windows are used they must provide for one-way vision into client areas for staff at the staff station and must be made of tempered, shatterproof glass. The Department will consider alternative design solutions to one-way vision which will accommodate the requirements for client area accessibility and monitoring. (3-29-10)~~

~~03. **Disease Protection of Clients.** Client areas must provide for disease protection and be maintained in a clean sanitary condition at all times. (3-29-10)~~

~~04. **Furniture.** Furniture located in client areas must be weighted or secured to the floor to ensure safety of staff and clients. (3-29-10)~~

~~05. **Location of Client Areas.** Client areas in a sobering station must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-29-10)~~

~~06. **Numbered Rooms.** Client rooms for a sobering station must be numbered. (3-29-10)~~

~~07. **Size of Client Rooms.** Square footage requirements for client rooms in a sobering station must provide for not less than thirty (30) square feet of floor space per client. (3-29-10)~~

~~08. **Entrances to Client Rooms.** Entrances to all sobering station client rooms must be visible at all times to staff at the staff station. (3-29-10)~~

~~09. **Ceiling Height of Client Rooms.** Ceiling heights for client rooms must be a minimum of seven (7) feet, six (6) inches. (3-29-10)~~

~~10. **Floor Drain in Client Room.** Client rooms in a sobering station must have at least one tamper resistant floor drain installed. (3-29-10)~~

~~11. **Doors on Client Rooms.** Client rooms in a sobering station must have a ninety degree (90°) swinging door, at a minimum, that will not block any corridor or hallway, that is no less than thirty two (32) inches in width, with a vision window, and that opens out directly into a corridor visible at all times to staff at the staff station. The Department will consider alternative design solutions to one-way vision which will accommodate the requirements for client area accessibility and monitoring. (3-29-10)~~

~~12. **Utilities in Client Rooms.** Client rooms in a sobering station must have a toilet and hand-washing sink with solid walls or partitions to separate the toilet from the sleeping area, and have mechanical ventilation to the outside. (3-29-10)~~

~~13. **Client Rooms Free of Hazards.** Client rooms and areas in a sobering station must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-29-10)~~

~~14. **Airborne Infection Isolation Room.** Each sobering station must have at least one (1) private airborne infection isolation room with a toilet, hand-washing sink, and other accessory facilities that complies with (AH) 2006 AIA Guidelines for Design and Construction of Health Care Facilities. Private airborne infection isolation rooms must have no hardware, equipment, or furnishings that obstruct observation of a client, or that present a physical hazard, or a suicide risk. Private airborne infection isolation rooms must have at least sixty (60) square feet of floor space and a ceiling height of seven (7) feet, six (6) inches. (3-29-10)~~

~~15. **Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for sobering are separate and distinct from client areas for medically monitored detoxification and mental health diversion. (3-29-10)~~

~~16. **Prior Approval Needed for Reallocated or Relocated Beds.** Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for a sobering station cannot be reallocated or relocated unless prior approval has been obtained from the Department. (3-29-10)~~

~~641. — 649: (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

655. ADMINISTRATIVE AREAS.

The following administrative areas must be located in the facility, or readily available to staff. The size and disposition of each administrative area will depend upon the number and types of approved beds to be served. Depending on the size of the facility and the number of clients served, there may be a need for more than one of the administrative areas listed below. Although identifiable spaces are required to be provided for each of the indicated functions, consideration will be given to design solutions which would accommodate some functions without specific designation of areas or rooms. Details of such proposals must be submitted to the Department for prior approval. Each administrative area must be in compliance with Subsections 655.01 through 655.10 of this rule. (3-29-10)

01. Staff Station. The facility must have one (1) or more staff stations centrally located in each distinct service area for ~~the sobering station~~, the medically monitored detoxification unit, and the mental health diversion unit, with adequate space for charting and storage for administrative supplies. (3-29-10)()

02. Lounge and Toilets for Staff. The facility must have lounge and toilet rooms for staff. The toilet rooms may be unisex. (3-29-10)

03. Closets and Compartments. Individual closets or compartments, for the safekeeping of coats and personal effects of personnel, must be located convenient to the staff station or in a central location close to personnel. (3-29-10)

04. Clean Workroom or Clean Holding Room. If the room is used for work, it must contain a counter and hand-washing facilities. When the room is used only for storage as part of a system for distributing clean and sterile supplies, the work counter and hand-washing facilities can be omitted. (3-29-10)

05. Soiled Workroom and Soiled Holding Room. The soiled workroom must contain a clinical sink or equivalent flushing rim fixture and a sink for hand-washing, towel dispenser, work counter, waste receptacle, and soiled linen receptacle. (3-29-10)

06. Drug Distribution Station. The drug distribution station must be secure and convenient, with prompt twenty-four (24) hour availability of medicine. A secure medicine preparation area must be available and under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for controlled drugs, convenient to hand washing station and have a minimum area of fifty (50) square feet. A medicine dispensing unit can be located at the staff station, in the clean workroom, or in an alcove or other space convenient to staff and under staff control. (3-29-10)

07. Nourishment Station. The nourishment station must contain a sink equipped for hand-washing, towel dispenser, equipment for serving nourishment between scheduled meals, refrigerator, and storage cabinets. Ice for clients' must be provided only by icemaker-dispenser units. (3-29-10)

08. Equipment Storage Rooms. Rooms must be available for storage of equipment. (3-29-10)

09. Janitor's Closet. Rooms must be available for storage of janitorial supplies and equipment. (3-29-10)

10. Lockable Storage Area. A storage area of at least sixty-four (64) cubic feet (4x4x4), with segregated lockable storage compartments for client personal effects, must be maintained on-site. This storage area for client personal effects may be located in a separate area inside or outside of the facility's buildings. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

685. VENTILATION.

~~**01. Detox/Mental Health Diversion Unit Ventilation.** Each detox/mental health diversion unit must be adequately ventilated and precautions must be taken to prevent offensive odors in compliance with the minimum requirements of the Uniform Mechanical Code. (3-29-10)()~~

~~**02. Sobering Station Ventilation.** A facility with a sobering station, must have private airborne infection isolation rooms that are adequately ventilated and precautions must be taken to prevent offensive odors in compliance with the following minimum requirements of the 2006 AIA Guidelines for Design and Construction of Health Care Facilities:~~

TABLE 685.02—MINIMUM REQUIREMENTS OF THE 2006 AIA GUIDELINES FOR DESIGN AND CONSTRUCTION OF HEALTH CARE FACILITIES—VENTILATION PRECAUTIONS FOR SOBERING STATIONS				
Area	Air Movement/Relation	Minimum Outdoor Air Changes/Hr	Total Air Changes/Hr	Exhausted
Isolation Room	In	2	12	Yes

~~(3-29-10)~~

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The rule strikes reference to the American Dental Association’s sedation documents as incorporated by reference. Qualifying course requirements were added to the moderate sedation rule.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the May 2, 2018 Idaho Administrative Bulletin, [Vol. 18-5, pages 132-138](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact to the state general fund or the Board of Dentistry’s dedicated fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Susan Miller, (208) 334-2369.

Dated this 1st day of August, 2018.

Susan Miller
Executive Director
Idaho Board of Dentistry
350 N. 9th Street, Ste. M100
P.O. Box 83720
Boise, ID 83720-0021
Phone: (208) 334-2369
Fax: (208) 334-3247

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 16, 2018.

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:

A pending rule promulgated under Docket No. 19-0101-1701 was adopted by the Board on October 6, 2017, published in the November 1, 2017 Administrative Bulletin, and submitted for legislative review and approval during the 2018 legislative session. Errors made inadvertently during the promulgation of the proposed and pending rulemaking were discovered during the review of the pending rule. Because of this, the Board of Dentistry requested that the germane committees reject the rule so that the corrected rule could be re-promulgated.

Rule 19.01.01.004 is being amended to delete the American Dental Association's sedation-related documents as incorporated by reference. The rules regarding moderate sedation (19.01.01.060) are being amended by the addition of qualifying course requirements.

A temporary rule was adopted under this docket effective March 30, 2018 and published in the March 7, 2018 Idaho Administrative Bulletin, [Vol. No. 18-3, page 15](#). This rule is now being promulgated as a proposed rulemaking.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted when the rule was promulgated under Docket No. 19-0101-1701. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Volume No. 17-7, page 69](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, (208) 334-2369. 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 May 23, 2018.

Dated this 6th day of April, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-1801

004. INCORPORATION BY REFERENCE (RULE 4).

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

01. Professional Standards. (3-29-12)

a. American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 8th Edition, 2012. (3-20-14)

~~**b.** American Dental Association, Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, October 2007. (4-7-11)~~

~~**c.** American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)~~

~~**d.** American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)~~

eb. Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

fc. American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2009. (4-7-11)

gd. American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), June 2009. (4-7-11)

he. American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. (4-7-11)

02. Availability. These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

060. MODERATE SEDATION (RULE 60).

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under sixteen (16) years of age and one hundred (100) pounds unless they have qualified for and been issued a moderate parenteral sedation permit. (3-29-12)

01. Training Requirements for a Moderate Enteral Sedation Permit. To qualify for a moderate enteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed ~~in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 in these rules~~ **by the Board within the five (5) year period immediately prior to the date of application**

for a moderate sedation permit. The five (5) year requirement regarding the required training for a moderate ~~enteral~~ sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. ~~To obtain a moderate enteral sedation permit, a dentist must provide verification of~~ Qualifying training courses must be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or be approved by the Board of Dentistry. The training program shall include the following: (4-11-15)()

~~a. Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; and~~ Course objectives: (4-7-11)()

- ~~i. List and discuss the advantages and disadvantages of moderate sedation;~~ ()
- ~~ii. Discuss prevention, recognition and management of complications associated with moderate sedation;~~ ()
- ~~iii. Administer moderate sedation to patients in a clinical setting in a safe and effective manner;~~ ()
- ~~iv. Discuss the abuse potential, occupational hazards and other untoward effects of the agents utilized to achieve moderate sedation;~~ ()
- ~~v. Describe and demonstrate the technique of intravenous access, intramuscular injection and other parenteral techniques;~~ ()
- ~~vi. Discuss the pharmacology of the drug(s) selected for administration;~~ ()
- ~~vii. Discuss the precautions, indications, contraindications and adverse reactions associated with the drug(s) selected;~~ ()
- ~~viii. Administer the selected drug(s) to dental patients in a clinical setting in a safe and effective manner;~~ ()
- ~~ix. List the complications associated with techniques of moderate sedation;~~ ()
- ~~x. Describe a protocol for management of emergencies in the dental office and list and discuss the emergency drugs and equipment required for the prevention and management of emergency situations;~~ ()
- ~~xi. Discuss principles of advanced cardiac life support or an appropriate dental sedation/anesthesia emergency course equivalent;~~ ()
- ~~xii. Demonstrate the ability to manage emergency situations; and~~ ()
- ~~xiii. Demonstrate the ability to diagnose and treat emergencies related to the next deeper level of anesthesia than intended.~~ ()

- ~~b. Current certification in Advanced Cardiac Life Support.~~ Course Content: (4-11-15)()
- ~~i. Historical, philosophical and psychological aspects of anxiety and pain control;~~ ()
 - ~~ii. Patient evaluation and selection through review of medical history taking, physical diagnosis and psychological considerations;~~ ()
 - ~~iii. Use of patient history and examination for ASA classification, risk assessment and pre-procedure~~

- fasting instructions: ()
- iv. Definitions and descriptions of physiological and psychological aspects of anxiety and pain; ()
 - v. Description of the sedation anesthesia continuum, with special emphasis on the distinction between the conscious and the unconscious state; ()
 - vi. Review of pediatric and adult respiratory and circulatory physiology and related anatomy; ()
 - vii. Pharmacology of local anesthetics and agents used in moderate sedation, including drug interactions and contraindications; ()
 - viii. Indications and contraindications for use of moderate sedation; ()
 - ix. Review of dental procedures possible under moderate sedation; ()
 - x. Patient monitoring using observation and monitoring equipment, with particular attention to vital signs and reflexes related to consciousness; ()
 - xi. Maintaining proper records with accurate chart entries recording medical history, physical examination, informed consent, time-oriented anesthesia record, including the names of all drugs administered including local anesthetics, doses, and monitored physiological parameters; ()
 - xii. Prevention, recognition and management of complications and emergencies; ()
 - xiii. Description and use of moderate sedation monitors and equipment; ()
 - xiv. Discussion of abuse potential; ()
 - xv. Intravenous access: anatomy, equipment and technique; ()
 - xvi. Prevention, recognition and management of complications of venipuncture and other parenteral techniques; ()
 - xvii. Description and rationale for the technique to be employed; and ()
 - xviii. Prevention, recognition and management of systemic complications of moderate sedation, with particular attention to airway maintenance and support of the respiratory and cardiovascular systems. ()
- c.** Hours of instruction: ()
- i. For a moderate enteral sedation permit, the applicant must provide proof of training with a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation. ()
 - ii. For a moderate parenteral sedation permit, the applicant must provide proof of training with a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route. ()

02. ~~*Requirements for a Moderate Parenteral Sedation Permit. To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a moderate parenteral sedation permit.*~~

~~The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The training program shall:~~ **Advanced Cardiac Life Support. Applicants for a moderate sedation permit must provide verification of current certification in Advanced Cardiac Life Support or Pediatric Advanced life Support, whichever is appropriate for the patient being sedated.** (4-7-11)()

~~a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and~~ (4-5-00)

~~b. Consist of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route; and~~ (4-7-11)

~~c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received.~~ (3-18-99)

~~d. In addition, the dentist must maintain current certification in Advanced Cardiac Life Support or Pediatric Advanced Life Support, whichever is appropriate for the patient being sedated.~~ (3-29-17)

03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits. The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. ~~The Board adopts the standards incorporated by reference in Section 004.01.c. and Section 004.01.d. of these rules as set forth by the American Dental Association.~~ (4-11-15)()

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: (4-11-15)

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; (4-11-15)

ii. An operating table or chair that permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; (4-11-15)

iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; (4-11-15)

iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure; (4-11-15)

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; (4-11-15)

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; (4-11-15)

vii. A sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, and automated external defibrillator (AED); and (4-11-15)

viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, bronchodilators, and antihistamines. (4-11-15)

- ix. Additional emergency equipment and drugs required for moderate parenteral sedation permits include precordial/pretracheal stethoscope or end-tidal carbon dioxide monitor, intravenous fluid administration equipment, vasopressors, and anticonvulsants. (3-29-17)
- b. Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)
- i. The operator; and (10-1-87)
- ii. An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)
- iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The dentist and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (4-11-15)
- c. Pre-sedation Requirements. Before inducing moderate sedation, a dentist shall: (4-11-15)
- i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for moderate sedation; (4-11-15)
- ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; (4-11-15)
- iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and (4-11-15)
- iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. (4-11-15)
- d. Patient Monitoring. Patients shall be monitored as follows: (4-11-15)
- i. Patients must be continuously monitored using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under moderate sedation shall be continuously monitored; (3-29-17)
- ii. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from moderate sedation; (4-11-15)
- iii. A dentist shall not release a patient who has undergone moderate sedation except to the care of a responsible third party; (4-11-15)
- iv. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and (4-11-15)
- v. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. (4-11-15)
- e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their

sedation.

(4-11-15)

f. Permit Renewal. Before the expiration date of a permit, the Board will, as a courtesy, mail notice for renewal of permit to the last mailing address on file in the Board's records. The licensee must return the completed renewal application along with the current renewal fees prior to the expiration of said permit. Failure to submit a renewal application and permit fee shall result in expiration of the permit and termination of the licensee's right to administer moderate sedation. Failure to submit a complete renewal application and permit fee within thirty (30) days of expiration of the permit shall result in cancellation of the permit. A licensee whose permit is canceled due to failure to renew within the prescribed time is subject to the provisions of Paragraph 060.03.g. of these rules. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. In addition to the continuing education hours, a dentist must:

(3-29-17)

i. For a moderate enteral sedation permit, maintain current certification in basic life support for healthcare providers or advanced cardiac life support;

(4-11-15)

ii. For a moderate parenteral sedation permit, maintain current certification in advanced cardiac life support.

(3-20-14)

g. Reinstatement. A dentist may make application for the reinstatement of a canceled or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's cancellation or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in moderate sedation for each year subsequent to the date upon which the permit was canceled or surrendered. A fee for reinstatement shall be assessed to cover administrative costs.

(3-29-17)

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1803
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rule eliminates the option of supplemental dosing when providing minimal sedation for patients.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 280-282](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact to the state general fund or the Board of Dentistry's dedicated fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Susan Miller, (208) 334-2369.

Dated this 29th day of October, 2018.

Susan Miller
Executive Director
Phone: (208) 334-2369
Fax: (208) 334-3247
Idaho Board of Dentistry
350 N. 9th St., Ste. M100
P.O. Box 83720
Boise, ID 83720-0021

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 Board of Dentistry is proposing to eliminate the option of supplemental dosing when providing minimal sedation for patients. The current rule allows for 1.5 times the MRD of medication on the day of treatment. This rule reduces the amount of sedation that can be given to no more than the MRD on the day of treatment. The reduced amount of medication that may be administered for minimal sedation is the generally accepted standard for patient safety.

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

There are no fees associated with this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no fiscal impact associated with 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 June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 78](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, (208) 334-2369.

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 26, 2018.

Dated this 1st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-1803

054. DEFINITIONS (RULE 54).

For the purposes of these anesthesia rules, the following terms will be used, as defined below: (4-11-06)

01. Methods of Anxiety and Pain Control. (4-11-06)

a. Analgesia shall mean the diminution or elimination of pain. (4-7-11)

b. Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. (4-7-11)

c. Minimal sedation shall mean a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough never to render unintended loss of consciousness. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of minimal sedation. (4-7-11)

d. Moderate sedation shall mean a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (4-7-11)

e. Deep sedation shall mean a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (4-7-11)

f. General anesthesia shall mean a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. (4-7-11)

02. Sedation Terms. (4-11-06)

a. Advanced Cardiac Life Support (ACLS) shall mean an advanced cardiac life support course or a pediatric advanced life support course offered by a recognized accredited organization. (4-11-15)

b. Monitor or monitoring shall mean the direct clinical observation of a patient during the administration of anesthesia by a person trained to observe the physical condition of the patient and capable of assisting with emergency or other procedures. (4-11-06)

c. Operator shall mean the supervising dentist or another person who is authorized by these rules to induce and administer the proper level of anesthesia/sedation. (4-11-15)

d. Titration shall mean the administration of incremental doses of a drug until a desired effect is reached. Knowledge of each drug's time of onset, peak response and duration of action is essential to avoid over sedation. Although the concept of titration of a drug to effect is critical for patient safety, when the intent is moderate sedation one must know whether the previous dose has taken full effect before administering an additional drug

increment. (4-7-11)

e. Maximum recommended dose (MRD) shall mean maximum FDA-recommended dose of a drug, as printed in FDA-approved labeling for unmonitored home use. (3-20-14)

f. Incremental dosing shall mean administration of multiple doses of a drug until a desired effect is reached, but not to exceed the maximum recommended dose (MRD). (4-7-11)

~~g. Supplemental dosing during minimal sedation shall mean a single additional dose of the initial drug that may be necessary for prolonged procedures. The supplemental dose should not exceed one-half of the initial dose and should not be administered until the dentist has determined the clinical half life of the initial dosing has passed. The total aggregate dose must not exceed one and one-half times (1.5x) MRD on the day of treatment. (4-7-11)~~

03. Routes of Administration. (4-11-06)

a. Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual). (4-11-06)

b. Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the lungs and whose primary effect is due to absorption through the gas/blood interface. (4-7-11)

c. Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract [i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC), intraosseous (IO)]. (4-7-11)

d. Transdermal. A technique of administration in which the drug is administered by patch or iontophoresis through skin. (4-7-11)

e. Transmucosal. A technique of administration in which the drug is administered across mucosa such as intranasal, sublingual, or rectal. (4-7-11)

055. MINIMAL SEDATION (RULE 55).

Persons licensed to practice dentistry in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer minimal sedation to patients of sixteen (16) years of age or older. When the intent is minimal sedation, the appropriate ~~initial~~ dosing of a single enteral drug is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. In cases where the patient weighs less than one hundred (100) pounds, or is under the age of sixteen (16) years, minimal sedation may be administered without a permit by use of nitrous oxide, or with a single enteral dose of a sedative agent administered in the dental office. ~~(3-29-17)~~ ()

01. Patient Safety. The administration of minimal sedation is permissible so long as it does not produce an alteration of the state of consciousness in a patient to the level of moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of moderate sedation, deep sedation or general anesthesia. Nitrous oxide/oxygen may be used in combination with a single enteral drug in minimal sedation, except as described in Section 055 of these rules. Notwithstanding any other provision in these rules, a dentist shall initiate and regulate the administration of nitrous oxide/oxygen when used in combination with minimal sedation. (3-20-14)

02. Personnel. At least one (1) additional person currently certified in Basic Life Support for Healthcare Providers must be present in addition to the dentist. (4-7-11)

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1804
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rule amends the eligibility requirements for specialty licensure and updates the provisions for specialty advertising.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 283-285](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact to the state general fund or the Board of Dentistry's dedicated fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Susan Miller, (208) 334-2369.

Dated this 29th day of October, 2018.

Susan Miller
Executive Director
Phone: (208) 334-2369
Fax: (208) 334-3247
Idaho Board of Dentistry
350 N. 9th St., Ste. M100
P.O. Box 83720
Boise, ID 83720-0021

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 definition of a dental specialist was revised by the 2018 Legislature. The proposed rulemaking amends the eligibility requirements for specialty licensure and updates the provisions for specialty advertising.

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

There are no fees associated with this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no fiscal impact associated with 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 June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 79](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, (208) 334-2369.

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 26, 2018.

Dated this 1st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-1804

045. LICENSURE OF DENTAL SPECIALISTS (RULE 45).

01. Requirements for Specialty Licensure. Each applicant shall have a general license for the practice of dentistry in the state of Idaho or another state. The Board may grant licensure in specialty areas of dentistry for which a dentist has completed a postdoctoral advanced dental education program of at least two full-time academic years and which program is accredited by the American Dental Association Commission on Dental Accreditation. Any applicant who desires to be licensed in ~~one (1) of the a~~ Board recognized specialties, ~~which include and are limited to Dental Public Health, Endodontics, Oral and Maxillofacial Pathology, Oral and Maxillofacial Radiology, Oral and Maxillofacial Surgery, Orthodontics, Pediatric Dentistry, Periodontics, and Prosthodontics,~~ must be a graduate of ~~and hold a certificate from both~~ a dental school ~~and a Graduate Training Program that are~~ accredited by the American Dental Association Commission on Dental Accreditation ~~of the American Dental Association.~~ (3-29-10)()

02. Application. Application for license to practice a recognized dental specialty must be filed in the office of the Board of Dentistry, Statehouse Mail P.O. Box 83720, Boise, Idaho. The application must be attested before a notary public. (7-1-93)()

03. Examination. Specialty licensure in those specialties recognized may be granted solely at the discretion of the Idaho State Board of Dentistry. An examination covering the applicant's chosen field may be required and, if so, will be given by the Idaho State Board of Dentistry or its agent. Applicants who have met the requirements for licensure as a specialist may be required to pass an examination as follows: (3-29-10)

a. Applicants who have passed a general licensure examination acceptable to the Board may be granted specialty licensure by Board approval. (3-29-10)

b. Applicants who have passed a general licensure examination not acceptable to the Board may be required to pass a specialty examination. (3-29-10)

c. Applicants who are certified by the American Board of that particular specialty as of the date of application for specialty licensure may be granted specialty licensure by Board approval. (3-29-10)

04. Limitation of Practice. No dentist shall announce or otherwise hold himself out to the public as a specialist unless he has first complied with the requirements established by the Idaho State Board of Dentistry for such specialty and has been issued a specialty license authorizing him to do so. Any individual granted a specialty license must limit his practice to the specialty(s) in which he is licensed. (3-20-04)

046. SPECIALTY ADVERTISING (RULE 46).

~~The Board recognizes and licenses the following specialty areas of dental practice: Dental Public Health; Endodontics; Oral and Maxillofacial Pathology; Oral and Maxillofacial Radiology; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics.~~ The specialty advertising rules are intended to allow the public to be informed about recognized dental specialties ~~and specialization competencies of licensees~~ and to require appropriate disclosures to avoid misperceptions on the part of the public. (3-29-17)()

01. Recognized Specialty License. An advertisement shall not state that a licensee is a specialist, ~~or specializes in a recognized specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice~~ unless the licensee has been issued granted a license in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as ~~"Endodontist," "Pedodontist," "Pediatric Dentist," "Periodontist," "Prosthodontist," "Orthodontist," "Oral and Maxillofacial Pathologist," "Oral Pathologist," "Oral and Maxillofacial Radiologist," "Oral Radiologist," "Oral and Maxillofacial Surgeon," "Oral Surgeon," "Specialist," "Board Certified," "Diplomate," "Practice Limited To," and "Limited To Specialty Of"~~ shall be prima

facie evidence that the licensee is holding himself out to the public as a licensed specialist in a specialty area of dental practice. (3-29-17)()

02. Disclaimer. A licensee who has not been granted a specialty license~~d~~ by the Board ~~in a recognized specialty area of dental practice~~ may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the licensee is “licensed as a general dentist” or that the specialty services “will be provided by a general dentist.” Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-29-17)()

03. Unrecognized Specialty. A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-29-17)

IDAPA 22 – BOARD OF MEDICINE

22.01.01 – RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY IN IDAHO

DOCKET NO. 22-0101-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rulemaking updates and clarifies the Board's rules regarding physician licensure and practice, and ensures that the physician licensure rules are consistent with the Medical Practice Act. These rules update definitions and organizational titles, and they delete unnecessary and duplicative provisions. In addition, the current provisions of IDAPA 22.01.02 regarding registration of interns and residents and the current provisions of IDAPA 22.01.04 regarding registration of supervising and directing physicians will be updated and moved into this chapter.

Changes to the pending rule were adopted by the Idaho State Board of Medicine on December 7, 2018, and include:

- Amending language in Subsection 162.03 regarding increasing the number of physician assistants or graduate physician assistants supervised by a supervising physician or alternate supervising physician from three (3) to four (4);
- Amending language in Paragraph 165.02.a. and Subparagraph 165.02.c.i. regarding supervision of cosmetic treatment providers to clarify the frequency of physician assessment of the patient; and
- Amending language in Paragraphs 243.03.d., 243.03.e., and Subsection 244.03 regarding supervision of interns and residents to omit the requirement for identification of an alternate supervising physician.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this Bulletin. The complete text of the proposed rule was published in the November 7, 2018, Idaho Administrative Bulletin, **Vol. 18-11, pages 56 through 76**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund. This rule eliminates registration of medical students ("externs"), which will reduce the Board's annual income by approximately \$1500.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 7th day of December, 2018.

Anne K. Lawler, JD, RN, Executive Director
Phone: (208) 327-7000 / Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

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

PUBLIC HEARING
Thursday, December 6, 2018 – 3:00 p.m. to 5:00 p.m.

345 W. Bobwhite Court, Suite 150
Idaho State Board of Medicine
Boise, Idaho 83706

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the intended proposed rulemaking and the principal issues involved:

The Board of Medicine is promoting regulatory reform by streamlining and combining its rules and reducing obstacles to licensure and practice. The purpose of this proposed rulemaking is to update and clarify the Board's rules regarding physician licensure and practice, and to ensure that the physician licensure rules are consistent with the Medical Practice Act. These rules update definitions and organizational titles, and they delete unnecessary and duplicative provisions. In addition, the current provisions of IDAPA 22.01.02 regarding registration of interns and residents and the current provisions of IDAPA 22.01.04 regarding registration of supervising and directing physicians have been updated and moved into this chapter.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund. This rule eliminates registration of medical students ("externs"), which will reduce the Board's annual income by approximately \$5500.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000.

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 December 6, 2018.

Dated this 4th day of October, 2018.

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0101-1801

22.01.01 – RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE MEDICINE ~~AND SURGERY~~ AND OSTEOPATHIC MEDICINE ~~AND SURGERY~~ IN IDAHO

000. LEGAL AUTHORITY.

Pursuant to Sections 54-1806(2), 54-1806(4), ~~54-1806(11)~~, 54-1806A, ~~52-1807~~, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to govern the practice of Medicine in Idaho. ~~(3-26-08)()~~

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 22.01.01, “Rules of the Board of Medicine for the Licensure to Practice Medicine ~~and Surgery~~ and Osteopathic Medicine ~~and Surgery~~ in Idaho.” ~~(7-1-93)()~~

002. WRITTEN INTERPRETATIONS.

~~Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rule making that originally proposed the rules and review of comments submitted in the rulemaking process in the adoption of these rules are available for review and copying at cost from the Board of Medicine, 1755 Westgate Drive, Suite 140, Box 83720 Boise, Idaho 83720-0058~~ In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Board of Medicine office. ~~(5-3-03)()~~

003. ADMINISTRATIVE APPEAL.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, “Idaho Rules of Administrative Procedures of the Attorney General;” ~~and IDAPA 22.01.07, “Rules of Practice and Procedure of the Board of Medicine,” and this chapter.~~ ~~(3-29-10)()~~

004. PUBLIC RECORD ACT COMPLIANCE.

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. Pursuant to Sections ~~74-106(9)~~ and 74-106(11), Idaho Code, the Board may discuss, exchange and share complaints and the details of investigations with other Idaho state agencies or with other state boards in investigation and enforcement concerning violations of the Idaho Medical Practice Act and Board rules and comparable practice acts of other states. ~~(3-29-10)()~~

005. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. (3-26-08)

006. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 345 W. Bobwhite Court, Suite 150, Boise, Idaho 83706. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 327-7005. The Board's web site is www.bom.idaho.gov. The Board's office hours for filing documents are 8 a.m. to 5 p.m. (4-4-13)

007. FILING OF DOCUMENTS - NUMBER OF COPIES.

All original documents and one (1) electronic copy in rulemaking or contested case proceedings must be filed with the office of the Board. (4-4-13)

008. SEVERABILITY.

The sections and subsections of these rules are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (3-26-08)

009. (RESERVED)

010. DEFINITIONS.

01. Acceptable School of Medicine. A medical school or college of osteopathic medicine located within the United States accredited by the Liaison Committee on Medical Education (LCME), Joint Committee of the Association of American Medical Colleges (AAMC) and the American Medical Association (AMA), or the [Commission on Osteopathic College Accreditation \(COCA\) of the American Osteopathic Association \(AOA\)](#). A medical school or college of osteopathic medicine located within Canada accredited by the [Liaison Committee on Medical Education \(LCME\)](#) and by the Committee on Accreditation ~~for of~~ Canadian Medical Schools, ~~as sponsored by the Canadian Medical Association and Association of Canadian Medical Colleges or the American Osteopathic Association (AOA) (CACMS)~~. (3-26-08)()

02. Acceptable International School of Medicine. An international medical school located outside the United States or Canada that meets the standards for medical educational facilities set forth in Subsection 051.02, is accredited by the Educational Commission for Foreign Medical Graduates (ECFMG) and provides the scope and content of the education and coursework that are equivalent to acceptable schools of medicine located within the United States or Canada. (3-26-08)

03. Accreditation Council for Graduate Medical Education (ACGME). A nationally recognized accrediting authority responsible for accreditation of post-Medical Doctor medical training programs within the United States. (3-26-08)

04. Applicant. Any human person seeking a license to practice medicine from the Board. (3-26-08)

05. Board. The Idaho State Board of Medicine. (7-1-93)

06. Educational Commission for Foreign Medical Graduates (ECFMG). A nationally recognized non-profit organization that certifies international medical graduates who seek to enter United States residency and fellowship programs ~~and conducts the Clinical Skills Assessment (CSA)~~. (3-26-08)()

07. Federation of State Medical Boards of the United States (FSMB). A nationally recognized non-profit organization representing the seventy (70) medical ~~and osteopathic~~ boards of the United States and its territories. (3-26-08)()

08. Liaison Committee on Medical Education (LCME). An internationally recognized accrediting authority, sponsored by the Association of American Medical Colleges and the American Medical Association, for medical education programs leading to a Medical Doctor (MD) degree in United States and Canadian medical schools. (3-26-08)

09. License to Practice Medicine. A license issued by the Board to practice medicine ~~and surgery~~ or a license to practice osteopathic medicine ~~and surgery~~ in Idaho. (3-30-06)()

10. Medical Practice Act. Title 54, Chapter 18, Idaho Code. (3-30-06)

11. Certified Original ~~Certificate or~~ Documentation. The original document ~~itself~~ or certificate or a certified copy thereof issued by ~~the~~ an agency or institution and ~~mailed or~~ delivered directly from the source to the Board or a Board approved credential verification service. (3-26-08)()

011. ABBREVIATIONS.

01. AAMC. Association of American Medical Colleges. (3-26-08)

02. ACGME. Accreditation Council for Graduate Medical Education. (3-26-08)

03. AMA. American Medical Association. (3-26-08)

04. AOA. American Osteopathic Association. (3-26-08)

05. CACMS. Committee on Accreditation of Canadian Medical Schools. ()

06. COCA. Commission on Osteopathic College Accreditation. ()

057. ECFMG. Educational Commission for Foreign Medical Graduates. (3-26-08)

08. FAIMER. Foundation for Advancement of International Medical Education. ()

069. FSMB. Federation of State Medical Boards. (3-26-08)

107. LCME. Liaison Committee on Medical Education. (3-26-08)

0811. USMLE. United States Medical Licensing Exam. (3-26-08)

12. WFME. World Federation for Medical Education. ()

012. -- 049. (RESERVED)

050. GENERAL QUALIFICATIONS FOR LICENSURE AND RENEWAL.

01. Residence. No period of residence in Idaho shall be required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse licensure or renew a license if the applicant is not lawfully present in the United States. (3-26-08)

02. Character. The Board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by Section 54-1814, Idaho Code; provided the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. (7-1-93)

03. English Language. Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request only. (3-26-08)

04. Application. Each applicant must have graduated from an acceptable school of medicine, passed an examination acceptable to the Board that demonstrates qualification for licensure or successfully completed the United States Medical Licensing Exam (USMLE) and completed one (1) year of postgraduate training approved by the ACGME, AOA or Royal College of Physicians and Surgeons of Canada or its successor organization, and shall submit a completed written application to the Board on forms prescribed by the Board with the nonrefundable application fee. Any certificate or document required to be submitted to the Board that is not in the English language

must be accompanied by a certified translation thereof into English. The application form shall be verified and shall require the following: ~~(5-8-09)~~()

a. Personal identification information and education background of the applicant including ~~but limited to, his college education,~~ medical school education and postgraduate training; ~~(3-26-08)~~()

b. ~~An original certificate or~~ documentation of graduation from an acceptable school of medicine, and evidence of satisfactory completion of postgraduate training of one (1) year at one (1) training program accredited for internship, residency or fellowship training by the ACGME, AOA or Royal College of Physicians and Surgeons of Canada ~~or its successor organization;~~ ~~(3-26-08)~~()

c. The disclosure of any criminal charges, convictions or guilty pleas against the applicant other than minor traffic offenses; (7-1-93)

d. The current mental and physical condition of the applicant, ~~together with disclosure of any previous physical or mental illness~~ including any issue that may impact the applicant's ability to practice medicine; ~~(3-30-01)~~()

e. The disclosure of any past or pending medical malpractice actions against the applicant, and the judgments or settlements, if any, of such claims exceeding ~~two-hundred~~ fifty thousand dollars (\$250,000); ~~(5-8-09)~~()

f. The disclosure of any disciplinary action by any board of medicine, licensing authority, medical society, professional society, hospital, medical school, or institution staff in any state or country; (3-26-08)

g. The disclosure of the refusal to issue or renew a license to practice medicine by any state, Canadian or international licensing authority; (3-26-08)

h. References to include two (2) letters of recommendation signed by licensed physicians who have known the applicant professionally for at least one (1) year; (3-30-06)

i. An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than four inches tall by three inches wide (4" x 3"), taken not more than one (1) year prior to the date of the application; (3-30-06)

j. A certified copy of a full set of the applicant's fingerprints on forms supplied by the Board that shall be forwarded to the Idaho Department of Law Enforcement and to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database; (5-3-03)

k. The employment history and relevant practice locations of the applicant; (3-30-06)

~~l. Each state, country and jurisdiction in which the applicant has applied for a license to practice medicine;~~ ~~(3-26-08)~~

~~m.~~ Each state, country and jurisdiction wherein the applicant is licensed to practice medicine; (4-4-13)

~~n.~~ A copy of the applicant's birth certificate or current passport; and (4-4-13)

~~o.~~ Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency. (4-4-13)

05. Examination. Each applicant must pass an examination acceptable to the Board, within the time period recommended by the examination authority, that shall thoroughly test the applicant's fitness to practice medicine or successfully completed the United States Medical Licensing Exam (USMLE). If an applicant fails to pass any step of the examination on two (2) separate occasions the applicant may be required to be interviewed, or evaluated ~~or examined~~ by the Board. ~~(5-8-09)~~()

06. Interview. Each applicant may be personally interviewed by the Board, a Board member or a designated committee of the Board. The interview shall include a review of the applicant's qualifications and professional credentials. (3-30-01)()

07. Applicants. All applicants must complete their license application within one (1) year unless extended by the Board after filing an application for extension. Unless extended, applications that remain on file for more than one (1) year will be considered null and void and a new application and new fees will be required as if filing for the first time. (3-30-06)

08. Health Care Standards. In reviewing the application or conducting the applicant's interview, the Board shall determine whether the applicant possesses the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state. If the Board is unable to reach such a conclusion through the application and interview, it shall conduct further inquiry, to establish such qualifications. (3-30-06)

a. Upon inquiry, if further examination is required, the Board may require passage of the Special Purpose Examination (SPEX) administered by the FSMB, a post licensure assessment conducted by the FSMB, or an evaluation by an independent agency accepted by the Board to evaluate physician competence. (5-8-09)

b. The Board will require further inquiry when in its judgment the need is apparent, including but not limited to the following circumstances: (3-30-06)

i. Graduate of an international medical school located outside the United States and Canada and not accredited by the LCME; (5-8-09)

ii. Applicant whose background investigation reveals evidence of impairment, competency deficit, or disciplinary action by any licensing or regulatory agency; (3-26-08)

iii. An applicant has not been in active medical practice for a period exceeding one (1) year, or when practice has been significantly interrupted; (3-30-06)

iv. An applicant has not written a recognized examination intended to determine ability to practice medicine within a period of five (5) years preceding application; (3-30-06)

v. An applicant whose initial licensure was issued on the basis of an examination not recognized by the Board; or (3-30-06)

vi. When there is any reason whatsoever to question the identity of the applicant. (3-30-06)

c. Recommendations of the assessment and or evaluation acceptable to the Board related to the ability of the applicant to practice medicine and surgery will be considered by the Board in its decision whether to issue a license and the Board may limit, condition, or restrict a license based on the Board's determination and the recommendation of the assessment or evaluation. (3-30-06)

051. LICENSURE FOR GRADUATES OF INTERNATIONAL MEDICAL SCHOOLS LOCATED OUTSIDE OF THE UNITED STATES AND CANADA.

01. International Medical Graduate. In addition to meeting the requirements of Section 050, graduates of international medical schools located outside of the United States and Canada must submit to the Board: (3-26-08)

a. Original certificate from the ECFMG or original documentation that the applicant has passed the examination either administered or recognized by the ECFMG and passed an examination acceptable to the Board that demonstrates qualification for licensure or successfully completed the United States Medical Licensing Exam (USMLE). (5-8-09)

b. Original documentation directly from the international medical school that establishes to the

satisfaction of the Board that the international medical school meets the standards for medical educational facilities set forth in Subsection 051.02, and that both the scope and content of the applicant's coursework and performance were equivalent to those required of students of medical schools accredited by the LCME; (3-26-08)

c. Original documentation directly from the international medical school that it has not been disapproved or has its authorization, accreditation, certification or approval denied or removed by any state, country or territorial jurisdiction and that to its knowledge no state of the United States or any country or territorial jurisdiction has refused to license its graduates on the grounds that the school fails to meet reasonable standards for medical education facilities; (3-26-08)

d. A ~~complete and original~~ transcript from the international medical school showing successful completion of all the courses taken and grades received and original documentation of successful completion of all clinical coursework; and (3-26-08)()

e. Original documentation of successful completion of three (3) years of progressive postgraduate training at one (1) training program accredited for internship, residency, or fellowship training by the ACGME, AOA or the Royal College of Physicians and Surgeons of Canada or its successor organization, provided however, a resident who is attending an Idaho based residency program may be licensed after successful completion of two (2) years of progressive post graduate training, if the following conditions are met: (3-25-16)()

i. The resident must have the written approval of the residency program director; (3-25-16)

ii. The resident must have a signed written contract with the Idaho residency program to complete the entire residency program; (3-25-16)

iii. The resident must remain in good standing at the Idaho-based residency program; (3-25-16)

iv. The residency program must notify the Board within thirty (30) days if there is a change in circumstances or affiliation with the program (for example, if the resident resigns or does not demonstrate continued satisfactory clinical progress); and (3-25-16)

v. The Idaho residency program and the Idaho Board have prescreened the applicant to ensure that the applicant has received an MD or DO degree from an approved school that is eligible for Idaho licensure after graduation. (3-25-16)

~~f. ECFMG. The certificate from the ECFMG is not required if the applicant holds a license to practice medicine which was issued prior to 1958 in one (1) of the states of the United States and which was obtained by written examination. (3-26-08)~~

02. International Medical School Requirements. (3-26-08)

~~g. An international medical school, as must be listed in the World ~~Health Organization~~ Directory of Medical Schools, ~~which issued its first doctor of medicine degree less than fifteen (15) years prior to an application for licensure, must provide documented evidence of degree equivalency acceptable to the Board including, but not limited to: a joint venture of World Federation for Medical Education (WFME) and the Foundation for Advancement of International Medical Education and Research (FAIMER).~~ (3-26-08)()~~

~~i. The doctor of medicine degrees issued must be substantially equivalent to the degrees issued by acceptable medical schools located within the United States or Canada. Equivalency shall be demonstrated, in part, by original documentation of a medical curriculum of not less than thirty two (32) months, or its equivalent, of full-time classroom instruction and supervised clinical coursework. Such clinical coursework shall be in a hospital or hospitals that, at the time of the applicant's coursework, documented its evaluation of the applicant's performance in writing as a basis for academic credit by the medical school; (3-26-08)~~

~~ii. The medical school's admission requirements, including undergraduate academic subject requirements, entrance examination scores, and core curriculum are substantially equivalent to medical schools located within the United States or Canada; (3-26-08)~~

~~iii. The medical school has adequate learning facilities, class attendance, medical instruction, and clinical rotations consistent with quality medical education. (3-26-08)~~

~~iv. The medical school has not been disapproved or has its authorization, accreditation, certification, licensure, or approval denied or removed by any state, country or territorial jurisdiction; and (3-26-08)~~

~~v. The medical school does not issue diplomas, confer degrees or allow graduation based on Internet or on-line courses inconsistent with quality medical education. (3-26-08)~~

~~b. An international medical school, as listed in the World Health Organization Directory of Medical Schools, which issued its first doctor of medicine degree more than fifteen (15) years prior to an application for licensure, may, in the Board's discretion, be required to provide original documented evidence of degree equivalency acceptable to the Board. (3-26-08)~~

052. GRADUATES OF UNAPPROVED INTERNATIONAL MEDICAL SCHOOLS LOCATED OUTSIDE OF THE UNITED STATES OR CANADA.

In addition to meeting the requirements of Section 050 [of these rules](#), graduates of unapproved international medical schools located outside the United States or Canada that do not meet the requirements of Section 051 [.02 of these rules](#), shall submit to the Board an original certificate or document of three (3) of the four (4) following requirements. (3-26-08)()

01. Valid ECFMG Certificate. Hold a valid certificate issued by ECFMG. (3-26-08)

02. Three Years of Completed Post Graduate Training. Successful completion of three (3) years of progressive post graduate training at one (1) training program accredited for internship, residency or fellowship training in an ACGME or AOA or Royal College of Physicians and Surgeons of Canada [or its successor organization's](#) approved program. (3-26-08)()

03. Board Certification. Hold current board certification by a specialty board approved by the American Board of Medical Specialties or the AOA. (3-26-08)

04. Five Years Unrestricted Practice. Evidence of five (5) years of unrestricted practice as a licensee of any United States or Canadian jurisdiction. (3-26-08)

053. LICENSURE BY ENDORSEMENT.

An applicant, in good standing with no restrictions upon or actions taken against his license to practice medicine and surgery in a state, territory or district of the United States or Canada is eligible for licensure by endorsement to practice medicine in Idaho. An applicant with any disciplinary action, [whether including](#) past, pending, [public](#) or confidential, by any board of medicine, licensing authority, medical society, professional society, hospital, medical school or institution staff in any state, territory, district or country is not eligible for licensure by endorsement. An applicant ineligible for licensure by endorsement may make a full and complete application pursuant to the requirements of Sections 050, 051, or 052 [of these rules](#). (5-8-09)()

01. Character. An applicant is not eligible for licensure by endorsement if the Board finds the applicant has engaged in conduct prohibited by Section 54-1814, Idaho Code. (5-8-09)

02. Residence. No period of residence in Idaho shall be required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request [only](#). The Board shall refuse licensure or renew a license if the applicant is not lawfully present in the United States. (5-8-09)()

03. English Language. Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request [only](#). (5-8-09)()

04. Application. The applicant shall submit a completed written application to the Board on forms

furnished by the Board with the necessary nonrefundable application fee. Any certificate or document required to be submitted to the Board that is not in the English language must be accompanied by a certified translation thereof into English. The application form shall be verified and shall require the original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered directly from the source to the Board or a Board approved credential verification service of the following: (5-8-09)

a. Current, valid, unrevoked, unsuspended, undisciplined license to practice medicine and surgery in a state, territory or district of the United States or Canada shall constitute prima facie evidence of graduation from an acceptable school of medicine, successful completion of the United States Medical Licensing Exam (USMLE) and completion of one (1) year of postgraduate training approved by the ACGME, AOA or Royal College of Physicians and Surgeons of Canada or its successor organization; or current board certification by a specialty board approved by the American Board of Medical Specialties or AOA; (5-8-09)()

~~**b.** Current board certification by a specialty board approved by the American Board of Medical Specialties or AOA;~~ (5-8-09)

~~**e.** Five (5) years of contemporaneous active, unrestricted, clinical practice of medicine and surgery as a licensee of a state, territory or district of the United States or Canada;~~ (5-8-09)

~~**fb.** Disclosure of any past or current mental and/or physical condition of the applicant, together with disclosure of any previous physical or mental illness that may impact the applicant's ability to practice medicine;~~ (5-8-09)()

ec. Disclosure of past or pending medical malpractice actions against the applicant within the last ten (10) years and the judgments or settlements, if any, of such claims that exceed two-hundred fifty thousand dollars (\$250,000); (5-8-09)()

fd. An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than four inches tall by three inches wide (4" x 3"), taken not more than one (1) year prior to the date of the application; and (5-8-09)

ge. A certified copy of a full set of the applicant's fingerprints on forms supplied by the Board that shall be forwarded to the Idaho Department of Law Enforcement and to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database. (5-8-09)

05. Affidavit. An applicant shall provide the Board an Affidavit swearing that all the information he provides and all of his application answers are true and correct and that he is on notice that any false statement, omission, misrepresentation, or dishonest answer is a ground for denial of his application or revocation of his license. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

078. LICENSES.

01. Licensure Expiration. Each license to practice medicine shall be issued for a period of not less than one (1) year or more than five (5) years. Each license shall set forth its expiration date on the face of the certificate. Prorated fees may be assessed by the Board to bring the expiration date of the license within the next occurring license renewal period. The Board may condition the issuance of such a license for the full term upon the occurrence of events specified by the Board and the Board may extend a license for an intermediate period of time. (3-30-06)

02. Renewal. Each license to practice medicine may be renewed prior to its expiration date by the payment of a renewal fee to the Board and by completion of a renewal form provided by the Board. In order to be eligible for renewal, a licensee must provide a current address to the Board and must notify the Board of any change

of address prior to the renewal period. Licenses not renewed by their expiration date shall be canceled. (3-30-06)

03. ~~Reinstatement~~ **Reactivation.** Licenses canceled for nonpayment of renewal fees may be *reinstated reactivated* by filing a *reinstatement reactivation* application on forms prescribed by the Board and upon payment of a *reinstatement reactivation* fee and applicable renewal fees for the period the license was lapsed. ~~(3-30-06)~~()

04. Relicensure. Physicians whose licenses have been canceled for a period of more than five (5) years, shall be required to make application to the Board as new applicants for licensure. (3-26-08)

079. CONTINUING MEDICAL EDUCATION (CME) REQUIRED.

01. Purpose. The purpose of practice relevant CME is to enhance competence, performance, understanding of current standards of care, and patient outcomes. (5-3-03)

02. Renewal. Each person licensed to practice medicine and surgery or osteopathic medicine or surgery in Idaho shall complete no less than forty (40) hours of practice relevant, Category 1, CME every two (2) years. (5-3-03)

03. Approved Programs. All education offered by institutions or organizations accredited by the ACCME and reciprocating organizations or the AMA or AOA are considered approved. ~~(3-26-08)~~()

04. Verification of Compliance. Licensees shall, at license renewal, provide a signed statement to the Board indicating compliance. The Board, in its discretion, may require such additional evidence as is necessary to verify compliance. (5-3-03)

05. Alternate Compliance. The Board may accept certification or recertification by a member of the American Board of Medical Specialties, the American Osteopathic Association *Bureau of Professional Education*, or the Royal College of Physicians and Surgeons of Canada or its successor organization in lieu of compliance with continuing education requirements during the cycle in which the certification or recertification is granted. The Board may also grant an exemption for full time participation in a residency or fellowship training at a professionally accredited institution. ~~(5-3-03)~~()

06. Penalties for Noncompliance. The Board may condition, limit, suspend, or refuse to renew the license of any person whom the Board determines has failed to comply with the continuing education requirements of this chapter. (5-3-03)

080. VOLUNTEER LICENSE.

01. License. Upon completion of an application and verification of qualifications, the Board may issue a volunteer license to a physician who is retired from active practice for the purpose of providing medical service to people who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular medical treatment. (3-30-06)

02. Retired Defined. A physician previously holding a license to practice medicine and surgery and osteopathic medicine and surgery in Idaho or another state shall be considered retired if, prior to the date of the application for a volunteer's license, he has: (3-30-06)

a. Surrendered or allowed his license with active status to expire with the intent of ceasing active practice for remuneration or; (3-30-06)

b. Converted his active license to an inactive status with the intention of ceasing to actively practice for remuneration or; (3-30-06)

c. Converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice of medicine. (3-30-06)

03. Eligibility. A physician whose license has been restricted, suspended, revoked surrendered,

resigned, converted, allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action shall not be eligible for a volunteer license. The volunteer license cannot be converted to a license with active, inactive or temporary status. (3-30-06)

04. Application. The application for a volunteer license shall include the requirements listed in Section 050 of these rules and: (3-30-06)

a. Verification that the applicant held an active license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer license. (3-30-06)

b. The Board may at its discretion issue a volunteer license to a physician who has not held an active license in good standing for greater than five (5) years if the applicant has completed an examination acceptable to the Board that demonstrates the applicant possesses the knowledge and skills required to practice. (3-30-06)

c. A notarized statement from the applicant on a form prescribed by the Board, that the applicant will not provide any physician services to any person other than those permitted by the license and that the applicant will not accept any amount or form of remuneration, other than as reimbursement for the amount of actual expenses incurred as a volunteer physician, for any physician services provided under the authority of a volunteer's license. (3-30-06)

d. A completed *self* query of the *applicant from the* National Practitioner Databank *submitted to the Board.* (3-30-06) ()

05. Expiration. The volunteer license shall be valid until the expiration date printed on the license and may be renewed in accordance with these rules. (3-30-06)

06. Discipline. The volunteer license is subject to discipline in accordance with Section 54-1814, Idaho Code, and these rules. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

100. FEES -- TABLE.

01. Fees -- Table. Nonrefundable fees are as follows:

Fees -- Table	
Licensure Fee	Not more than \$600
Temporary License	Not more than \$300
<i>Reinstatement Reactivation</i> License Fee plus total of renewal fees not paid by applicant	Not more than \$300
Inactive License Renewal Fee	Not more than \$100
Renewal of License to Practice Medicine Fee	Not more than \$300
<i>Reactivation License Fee</i>	<i>Not more than \$200</i>
Duplicate Wallet License	Not more than \$20
Duplicate Wall License	Not more than \$50
Volunteer License Application Fee	\$0
Volunteer License Renewal Fee	\$0

~~(3-26-08)~~()

02. Administrative Fees for Services. Administrative fees for services shall be billed on the basis of time and cost. (7-1-93)

101. ADDITIONAL GROUNDS FOR SUSPENSION, REVOCATION OR DISCIPLINARY SANCTIONS.

01. Discipline. In addition to the statutory grounds for medical discipline set forth in Idaho Code, Section 54-1814, every person licensed to practice medicine or registered as an ~~extern~~, intern, resident or physician assistant is subject to discipline by the Board upon any of the following grounds: ~~(3-26-08)~~()

02. Unethical Advertising. Advertising the practice of medicine in any unethical or unprofessional manner, includes but is not limited to: (7-1-93)

a. Using advertising or representations likely to deceive, defraud or harm the public. (7-1-93)

b. Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her at his or her direction in the treatment of any disease or other condition of the body or mind. (7-1-93)

03. Standard of Care. Providing health care that fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, includes but is not limited to: (7-1-93)

a. Being found mentally incompetent or insane by any court of competent jurisdiction. (7-1-93)

b. Engaging in practice or behavior that demonstrates a manifest incapacity or incompetence to practice medicine. (7-1-93)

c. Allowing another person or organization to use his or her license to practice medicine. (7-1-93)

d. Prescribing, selling, administering, distributing or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to himself or herself or to a spouse, child or stepchild. (3-19-99)

e. Violating any state or federal law or regulation relating to controlled substances. (7-1-93)

f. Directly promoting surgical procedures or laboratory tests that are unnecessary and not medically indicated. (7-1-93)

g. Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by his or her legally designated representative. (7-1-93)

h. Failing to maintain adequate records. Adequate patient records means legible records that contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care. (3-30-06)

i. Engaging in a pattern of unprofessional or disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; provided that such behavior does not have to cause actual patient harm to be considered unprofessional or disruptive. ()

04. Conduct. Engaging in any conduct that constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient, includes but is not limited to: (7-1-93)

a. Obtaining any fee by fraud, deceit or misrepresentation. (7-1-93)

- b. Employing abusive billing practices. (7-1-93)
- c. Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by his or her legally designated representative. (7-1-93)
- d. Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of medicine. (7-1-93)
 - i. Consent of the patient shall not be a defense. (3-19-99)
 - ii. Section 101 does not apply to sexual contact between a medical care provider and the provider's spouse or a person in a domestic relationship who is also a patient. (3-19-99)
 - iii. A former patient includes a patient for whom the physician has provided medical services or prescriptions within the last twelve (12) months. (3-19-99)
 - iv. Sexual or romantic relationships with former patients beyond that period of time may also be a violation if the physician uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient. (3-19-99)
- e. Accepting any reimbursement for service, beyond actual expenses, while providing physician services under a volunteer license. (3-30-06)
- f. Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient, Board or Committee on Professional Discipline member, Board staff, hearing officer or witness in an attempt to influence the outcome of a disciplinary proceeding, investigation or other legal action. (3-30-06)
- g. Failure to obey state and local laws and rules governing the practice of medicine. (3-26-08)
- h. Failure to be lawfully present in the United States. (3-26-08)

102. -- ~~999~~150. (RESERVED)

151. DEFINITIONS RELATING TO SUPERVISING AND DIRECTING PHYSICIANS.

01. Alternate Directing Physician. A designated Idaho licensed physician, registered with the Board pursuant to this chapter and Title 54, Chapter 39, Idaho Code, who oversees the practice of athletic training and is responsible for the athletic training services provided by the athletic trainer in the temporary absence of the directing physician. ()

02. Alternate Supervising Physician. An Idaho licensed physician who is registered with the Board pursuant to this chapter and who has full responsibility for the medical acts and practice of a physician assistant or graduate physician assistant in the temporary absence of the supervising physician. ()

03. Alternate Supervising Physician for Interns and Residents. A physician licensed to practice medicine or licensed to practice osteopathic medicine in Idaho who has been designated by the supervising physician and approved by and registered by the Board to supervise the intern or resident in the temporary absence of the supervising physician. ()

04. Alternate Supervising Physician of Medical Personnel. An Idaho licensed physician who is registered with the Board pursuant to this chapter, who supervises and has full responsibility for cosmetic treatments using prescriptive medical/cosmetic devices and/or products provided by medical personnel in the temporary absence of the supervising physician. ()

05. Athletic Trainer. A person who has met the qualifications for licensure as set forth in Title 54, Chapter 39, Idaho Code, is licensed under that chapter, and carries out the practice of athletic training under the

direction of a designated Idaho licensed physician, registered with the Board. ()

06. Board. The Idaho State Board of Medicine established pursuant to Section 54-1805, Idaho Code. ()

07. Directing Physician. A designated Idaho licensed physician, registered with the Board pursuant to this chapter and Title 54, Chapter 39, Idaho Code, who oversees the practice of athletic training and is responsible for the athletic training services provided by the athletic trainer. This chapter does not authorize the practice of medicine or any of its branches by a person not so licensed by the Board. ()

08. Graduate Physician Assistant. A person who is a graduate of an approved program for the education and training of physician assistants and who meets all the requirements in IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants" for Idaho licensure but has not yet taken and passed the certification examination, and who has been authorized by the Board, as defined in IDAPA 22.01.03, Subsection 036.01, of these rules to render patient services under the direction of a supervising physician for a period of six (6) months or has passed the certification examination but who has not yet obtained a college baccalaureate degree, and who has been authorized by the Board, as defined in IDAPA 22.01.03, Subsection 036.02, to render patient services under the direction of a supervising physician for a period of not more than five (5) years. ()

09. Intern. Any person who has completed a course of study at an acceptable school of medicine as defined in Subsection 010.01 or 010.02 of these rules, and who is enrolled in a postgraduate medical training program. ()

10. Medical Personnel. An individual who provides cosmetic treatments using prescriptive medical/cosmetic devices and products that are exclusively non-incisive or non-ablative under the direction and supervision of a supervising physician registered with the Board, pursuant to the applicable Idaho statutes and the applicable rules promulgated by the Board. ()

11. Physician. A physician who holds a current active license issued by the Board to practice medicine or osteopathic medicine in Idaho and is in good standing with no restrictions upon or actions taken against his license. ()

12. Physician Assistant. Any person duly licensed with the Board as a physician assistant to render patient services under the direction of a supervising physician registered with the Board, pursuant to the applicable Idaho statutes and the applicable rules promulgated by the Board. ()

13. Resident. Any person who has completed a course of study at an acceptable school of medicine as defined in Subsection 010.01 or 010.02 of these rules, and who is enrolled in a postgraduate medical training program. ()

14. Supervising Physician. Any physician who is registered with the Board pursuant to this chapter and who supervises and has responsibility for the medical acts of and patient services provided by a physician assistant or graduate physician assistant. ()

15. Supervising Physician of Interns or Residents. Any person approved by and registered with the Board who is licensed to practice medicine and surgery or osteopathic medicine and surgery in Idaho, who signs the application for registration of an intern or resident, and who is responsible for the direction and supervision of their activities. ()

16. Supervising Physician of Medical Personnel. An Idaho licensed physician who is registered with the Board pursuant to this chapter, who supervises and has full responsibility for cosmetic treatments using prescriptive medical/cosmetic devices and products provided by medical personnel. ()

152. – 160. (RESERVED)

161. DUTIES OF DIRECTING PHYSICIANS.

01. Responsibilities. The directing physician accepts full responsibility for the acts and athletic training services provided by the athletic trainer and oversees the practice of athletic training of the athletic trainer, and for the supervision of such acts which shall include, but are not limited to: ()

a. An on-site visit at least semiannually to personally observe the quality of athletic training services provided; and ()

b. Recording of a periodic review of a representative sample of the records, including, but not limited to, records made from the past six (6) months of the review to evaluate the athletic training services that were provided. ()

02. Scope of Practice. The directing physician shall ensure the scope of practice of the athletic trainer, as set forth in IDAPA 22.01.10, "Rules for the Licensure of Athletic Trainers to Practice in Idaho," and Section 54-3903, Idaho Code, shall be limited to and consistent with the scope of practice of the directing physician and exclude any independent practice of athletic training by an athletic trainer. ()

03. Directing Responsibility. The responsibilities and duties of a directing physician may not be transferred to a business entity, professional corporation, or partnership, nor may they be assigned to another physician without prior notification and Board approval. ()

04. Available Supervision. The directing physician shall oversee the activities of the athletic trainer and must be available either in person or by telephone to supervise, direct, and counsel the athletic trainer. The scope and nature of the direction of the athletic trainer shall be outlined in an athletic training service plan or protocol, as set forth in IDAPA 22.01.10, "Rules for the Licensure of Athletic Trainers to Practice in Idaho," Section 013. ()

05. Disclosure. It shall be the responsibility of each directing physician to ensure that each athlete who receives athletic training services is aware of the fact that said person is not a licensed physician. This disclosure requirement can be fulfilled by the use of name tags, correspondence, oral statements, office signs, or such other procedures that under the involved circumstances adequately advise the athlete of the education and training of the person rendering athletic training services. ()

06. On-Site Review. The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of the directing physicians at the locations and facilities in which the athletic trainer practices at such times as the Board deems necessary. ()

162. DUTIES OF SUPERVISING PHYSICIANS.

01. Responsibilities. The supervising physician accepts full responsibility for the medical acts of and patient services provided by physician assistants and graduate physician assistants and for the supervision of such acts which shall include, but are not limited to: ()

a. An on-site visit at least monthly to personally observe the quality of care provided; ()

b. A periodic review of a representative sample of medical records to evaluate the medical services that are provided. When applicable, this review shall also include an evaluation of adherence to the delegation of services agreement between the physician and physician assistant or graduate physician assistant; and ()

c. Regularly scheduled conferences between the supervising physician and such licensees. ()

02. Pre-Signed Prescriptions. The supervising physician shall not utilize or authorize the physician assistant to use any pre-signed prescriptions. ()

03. Supervisory Responsibility. A supervising physician or alternate supervising physician shall not supervise more than four (4) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize a supervising physician or alternate supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. The responsibilities and duties of a supervising physician

may not be transferred to a business entity, professional corporation, or partnership, nor may they be assigned to another physician without prior notification and Board approval. ()

04. Available Supervision. The supervising physician shall oversee the activities of the physician assistant or graduate physician assistant, and must always be available either in person or by telephone to supervise, direct, and counsel such licensees. The scope and nature of the supervision of the physician assistant and graduate physician assistant shall be outlined in a delegation of services agreement, as set forth in IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants." Subsection 030.04. ()

05. Disclosure. It shall be the responsibility of each supervising physician to ensure that each patient who receives the services of a physician assistant or graduate physician assistant is aware of the fact that said person is not a licensed physician. This disclosure requirement can be fulfilled by the use of nametags, correspondence, oral statements, office signs, or such other procedures that under the involved circumstances adequately advise the patient of the education and training of the person rendering medical services. ()

163. ON-SITE REVIEW.

The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of the supervising physicians at the locations and facilities in which the physician assistant or graduate physician assistant practices at such times as the Board deems necessary. ()

164. DUTIES OF SUPERVISING PHYSICIANS OF INTERNS AND RESIDENTS.

01. Responsibilities. The supervising physician is responsible for the direction and supervision of the medical acts and patient services provided by an intern or resident. The direction and supervision of such activities shall include, but are not limited to: ()

a. An on-site visit at least monthly to personally observe the quality of care provided; ()

b. Recording of a periodic review of a representative sample of medical records to evaluate the medical services that are provided; and ()

c. Regularly scheduled conferences between the supervising physician and the intern or resident. ()

02. Available Supervision. The supervising physician shall oversee the activities of the intern or resident, and must always be available either in person or by telephone to supervise, direct and counsel the intern or resident. ()

03. Disclosure. It shall be the responsibility of each supervising physician to ensure that each patient who receives the services of an intern or resident is aware of the fact that said person is not a licensed physician. This disclosure requirement can be fulfilled by the use of nametags, correspondence, oral statements, office signs, or such other procedures that under the involved circumstances adequately advise the patient of the education and training of the person rendering medical services. ()

04. On-Site Review. The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of the supervising physicians at the locations and facilities in which the intern or resident practices at such times as the Board deems necessary. ()

165. SUPERVISING PHYSICIANS OF MEDICAL PERSONNEL.

Prescriptive medical/cosmetic devices and products penetrate and alter human tissue and can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation, and hyperpigmentation. Cosmetic treatments using such prescriptive medical/cosmetic devices and products is the practice of medicine as defined in Section 54-1803(1), Idaho Code. This chapter does not authorize the practice of medicine or any of its branches by a person not so licensed by the Board. ()

01. Definitions. ()

a. Ablative. Ablative is the separation, eradication, removal, or destruction of human tissue. ()

b. Incisive. Incisive is the power and quality of cutting of human tissue. ()

c. Cosmetic Treatment. An aesthetic treatment prescribed by a physician for a patient that uses prescriptive medical/cosmetic devices and products to alter human tissue. ()

d. Prescriptive Medical/Cosmetic Device. A federal food and drug administration approved prescriptive device that uses waveform energy including, but not limited to, intense pulsed light or lasers, to cosmetically alter human tissue. ()

e. Prescriptive Medical/Cosmetic Product. A federal food and drug administration approved prescriptive product whose primary intended use of the product is achieved through chemical action and cosmetically alters human tissue including, but not limited to, filler substances such as collagen or fat; lipo transfer; muscle immobilizers or sclerosing agents. ()

02. Duties and Responsibilities of Supervising Physicians. The supervising physician accepts full responsibility for cosmetic treatments provided by medical personnel using prescriptive medical/cosmetic devices and products and for the supervision of such treatments. The supervising physician shall be trained in the safety and use of prescriptive medical/cosmetic devices and products. ()

a. Patient Record. The supervising physician must document an adequate legible patient record of his evaluation and assessment of the patient prior to *the initial* cosmetic treatment. An adequate patient record must contain, at minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care including, but not limited to, a prescription for prescriptive medical/cosmetic devices and products. ()

b. Supervisory Responsibility. A supervising physician or alternate supervising physician of medical personnel shall not supervise more than three (3) such medical personnel contemporaneously. The Board, however, may authorize a supervising physician or alternate supervising physician to supervise a total of six (6) such medical personnel contemporaneously if necessary to provide adequate cosmetic treatments and upon prior petition documenting adequate safeguards to protect the public health and safety. The responsibilities and duties of a supervising physician may not be transferred to a business entity, professional corporation or partnership, nor may they be assigned to another physician without prior notification and Board approval. ()

c. Available Supervision. The supervising physician shall be on-site or immediately available to respond promptly to any questions or problems that may occur while a cosmetic treatment is being performed by medical personnel using prescriptive medical/cosmetic devices and products. Such supervision shall include, but is not limited to: ()

i. Periodic review of the medical records to evaluate the *prescribed* cosmetic treatments that are provided by such medical personnel including any adverse outcomes or changes in the treatment protocol; and()

ii. Regularly scheduled conferences between the supervising physician and such medical personnel. ()

d. Scope of Cosmetic Treatments. Medical personnel providing cosmetic treatments are limited to using prescriptive medical/cosmetic devices and products that are exclusively non-incisive and non-ablative. The supervising physician shall ensure cosmetic treatments using prescriptive medical/cosmetic devices and products provided by medical personnel shall be limited to and consistent with the scope of practice of the supervising physician. The supervising physician shall ensure medical personnel shall not independently provide cosmetic treatments using prescriptive medical/cosmetic devices and products. ()

i. The supervising physician shall ensure that, with respect to each procedure performed, the medical personnel possess the proper training in cutaneous medicine, the indications for the prescribed treatment, and the pre- and post-procedure care involved; and ()

ii. The supervising physician shall prepare a written protocol for medical personnel to follow when using prescriptive medical/cosmetic devices and products. The supervising physician is responsible for ensuring that the medical personnel use prescriptive medical/cosmetic devices and products only in accordance with the written protocol and do not exercise independent judgment when using prescriptive medical/cosmetic devices and products. ()

e. Training Requirements. Medical personnel who provide cosmetic treatments using prescriptive medical/cosmetic devices and products must have training and be certified by their supervising physicians on each device or product they will use. The training on each device or product must include the following: ()

i. Physics and safety of the prescriptive medical/cosmetic devices and products; ()

ii. Basic principle of the planned procedure and treatment; ()

iii. Clinical application of the prescriptive medical/cosmetic devices and products including, but not limited to, wavelengths to be used with intense pulsed light/lasers; ()

iv. Indications and contraindications for the use of the prescriptive medical/cosmetic devices and products; ()

v. Pre-procedure and post-procedure care; ()

vi. Recognition and acute management of complications that may result from the procedure or treatment; and ()

vii. Infectious disease control procedures required for each treatment. ()

viii. The supervising physician shall assure compliance with the training and reporting requirements of this rule. ()

ix. The supervising physician shall submit verification of training upon the Medical Personnel Supervising Physician Registration form provided by the Board, to the Board for approval prior to the provision of cosmetic treatments using prescriptive medical/cosmetic devices and products by medical personnel. The Board may require the supervising physician to provide additional written information, which may include his affidavit attesting to the medical personnel's qualifications and clinical abilities to perform cosmetic treatments using prescriptive medical/cosmetic devices and products. The Medical Personnel Supervising Physician Registration Form shall be sent to the Board and must be maintained on file at each practice location and at the address of record of the supervising physician. The Board may require such changes as needed to achieve compliance with this chapter and Title 54, Chapter 18, Idaho Code, and to safeguard the public. ()

f. Disclosure. It shall be the responsibility of each supervising physician to ensure that every patient receiving a cosmetic treatment using prescriptive medical/cosmetic devices and products by such medical personnel is aware of the fact that such medical personnel are not licensed physicians. This disclosure requirement can be fulfilled by the use of name tags, correspondence, oral statements, office signs, or such other procedures that under the involved circumstances adequately advise the patient of the education and training of the medical personnel rendering such cosmetic treatments. ()

g. On-Site Review. The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of the supervising physicians at the locations and facilities in which medical personnel provide cosmetic treatments using prescriptive medical/cosmetic devices and products at such times as the Board deems necessary. ()

h. Patient Complaints. The supervising physician shall report to the Board of Medicine all patient complaints received against medical personnel that relate to the quality and nature of cosmetic treatments rendered. ()

i. Duties and Responsibilities Nontransferable. The responsibilities and duties of a supervising

physician may not be transferred to a business entity, professional corporation, or partnership, nor may they be assigned to another physician or person. ()

166 -- 200. (RESERVED)

201. REGISTRATION BY SUPERVISING AND DIRECTING PHYSICIANS.

01. Registration and Renewal. Each supervising, directing, and alternate physician must register with the Board and such registration shall be renewed annually. ()

02. Notification. The supervising and directing physician must notify the Board of any change in the status of any physician assistant, graduate physician assistant, athletic trainer, or medical personnel for whom he is responsible, including, but not limited to, changes in location, duties, responsibilities, or supervision, or termination of employment within thirty (30) days of such event. ()

202. DISCIPLINARY ACTION.

Every person registered as a supervising, directing, or alternate physician in this state is subject to discipline by the Board pursuant to the procedures and powers set forth in Section 54-1806A, Idaho Code, for violation of these rules or upon any of the grounds set forth in Section 54-1814, Idaho Code. ()

203. -- 239. (RESERVED)

240. FEES.

Necessary fees shall accompany applications for registration and shall not be refundable. ()

01. Supervising Physician Registration Fee. The fee for supervising physician registration will be not more than fifty dollars (\$50) and the annual renewal fee will be not more than twenty-five dollars (\$25); provided however, alternate supervising physicians shall not be required to pay an annual renewal fee. ()

02. Directing Physician Registration Fee. The fee for directing physician registration will be not more than fifty dollars (\$50) and the annual renewal fee will be not more than twenty-five dollars (\$25); provided however, alternate directing physicians shall not be required to pay an annual renewal fee. ()

241. (RESERVED)

242. DEFINITIONS RELATED TO INTERNS AND RESIDENTS.

01. Acceptable Training Program. A medical training program or course of medical study that has been approved by the Liaison Committee for Medical Education (LCME), Council on Medical Education or Commission on Osteopathic College Accreditation (COCA) of the American Osteopathic Association (AOA). ()

02. Acceptable Post Graduate Training Program. A post graduate medical training program or course of medical study that has been approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association (AOA). ()

03. Intern or Resident. Any person who has completed a course of study at an acceptable school of medicine as defined in Subsection 010.01 or 010.02 of these rules, but is not yet licensed to practice medicine and who is enrolled in an acceptable postgraduate medical training program. ()

243. REQUIREMENTS FOR REGISTRATION OF INTERNS AND RESIDENTS.

01. Residence. No period of residence in Idaho shall be required of any applicant, however, each applicant for registration must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse to issue a registration or renew a registration if the applicant is not lawfully present in the United States. ()

02. English Language. Each applicant shall speak, write, read, understand, and be understood in the

English language. Evidence of proficiency in the English language must be provided upon request. ()

03. Application. Each intern or resident intending to commence activities in the state of Idaho that may involve activities constituting the practice of medicine, must submit a completed registration application to the Board on forms furnished by the Board and be issued a registration certificate prior to the commencement of any such activities. Any diploma or other document required to be submitted to the Board that is not in the English language must be accompanied by a certified translation thereof into English. The application form shall be verified and shall require the following information: ()

a. Personal identification information and the educational background of the intern or resident including his medical school education and any postgraduate training programs; ()

b. The disclosure of any criminal convictions, criminal charges, medical disciplinary actions or medical malpractice actions, whatever the outcome, naming the intern or resident; ()

c. A complete description of the program or course of study in the acceptable post graduate training program the applicant intends to follow, including documentation of the liability coverage to be provided to the applicant; ()

d. The name and address of the supervising physician and the location of the program or course of study; ()

e. The signature by the supervising physician by which they acknowledge and accept responsibility for the activities of the intern or resident; ()

f. Original documentation confirming ECFMG certification of the international medical graduate; ()

g. A copy of the applicant's birth certificate or current passport; and ()

h. Such other information as the Board deems relevant in reviewing the registration application. ()

244. GENERAL PROVISIONS FOR REGISTRATION.

01. Character. The Board may refuse to issue or renew registration if it finds that the applicant has engaged in conduct prohibited by Section 54-1814, Idaho Code; provided the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. ()

02. No Action on Application. An application upon which the applicant takes no further action will be held for no longer than one (1) year. ()

03. Registration Certificate. Upon approval of the registration application, the Board may issue a registration certificate that shall set forth the period during which the registrant may engage in activities that may involve the practice of medicine. Each registration shall be issued for a period of not less than one (1) year and shall set forth its expiration date on the face of the certificate. Each registration shall identify the supervising physician. Each registrant shall notify the Board in writing of any change of the supervising physician or the program or course of study fourteen (14) days prior to any such change. If the Board deems the intern or resident qualified, and if the course study requires, the Board may additionally certify on the registration certificate that the intern or resident is qualified to write prescriptions for Class III through Class V scheduled medications. ()

04. Termination of Registration. The registration of an intern or resident may be terminated, suspended, or made conditional by the Board on the grounds set forth in Section 54-1814, Idaho Code, and under the procedures set forth in Section 54-1806A, Idaho Code. ()

05. Annual Renewal of Registration. Each registration shall be renewed annually prior to its expiration date. Any registration not renewed by its expiration date shall be canceled. ()

06. Notification of Change. Each registrant shall notify the Board in writing of any adverse action or termination, whatever the outcome, from any post graduate training program and any name changes within fourteen (14) days of such event. ()

07. Disclosure. It shall be the responsibility of each registrant to ensure that every patient is aware of the fact that such intern and resident is currently enrolled in a post graduate training program and under the supervision of a licensed physician. This disclosure requirement can be fulfilled by the use of name tags, correspondence, oral statements, or such other procedures that under the circumstances adequately advise the patient of the education and training of the intern and resident. ()

245. FEES.

01. Registration Fee. The nonrefundable registration issuance fee shall be no more than twenty-five dollars (\$25). ()

02. Registration Annual Renewal Fee. The nonrefundable registration annual renewal fee shall be no more than twenty-five dollars (\$25). ()

03. Other. Administrative fees for services, including photocopying and review of records shall be billed on the basis of time and charges. ()

246. -- 999. (RESERVED)

IDAPA 22 – BOARD OF MEDICINE

22.01.02 – RULES OF THE BOARD OF MEDICINE FOR THE REGISTRATION OF EXTERNS, INTERNS, AND RESIDENTS

DOCKET NO. 22-0102-1801 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The Notice of Proposed Rule Repeal was published in the November 7, 2018 Idaho Administrative Bulletin, **Vol. 18-11, page 77**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 7th day of December, 2018.

Anne K. Lawler, JD, RN
Executive Director
Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706
Phone: (208) 327-7000
Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures to repeal a rule. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

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

PUBLIC HEARING
Thursday, December 6, 2018 – 3:00 p.m. to 5:00 p.m.

345 W. Bobwhite Court, Suite 150
Idaho State Board of Medicine
Boise, Idaho 83706

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board of Medicine is promoting regulatory reform by streamlining and combining its rules and reducing obstacles to licensure and practice. The purpose of this proposed rulemaking is to combine all provisions which apply to licensure and registration of physicians into IDAPA 22.01.01, Rules of the Board of Medicine for the Licensure to Practice Medicine and Osteopathic Medicine in Idaho. The provisions from IDAPA 22.01.02 relating to the registration of externs, interns, and residents will be merged into a IDAPA 22.01.01 to consolidate physician licensure and registration provisions. As a result, IDAPA 22.01.02 will be repealed.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000. 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 December 6, 2018.

Dated this 4th day of October, 2018.

[LINK: LSO Rules Analysis Memo](#)

IDAPA 22.01.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 22 – BOARD OF MEDICINE

22.01.03 – RULES FOR THE LICENSURE OF PHYSICIAN ASSISTANTS

DOCKET NO. 22-0103-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rulemaking updates and clarifies the Board's rules regarding physician assistant licensure and practice, and ensures that the physician assistant licensure rules are consistent with the Medical Practice Act. These rules update definitions and delete unnecessary and duplicative provisions. In addition, these rules add a physician assistant member and a public member to the Physician Assistant Advisory Committee and delete registration for physician assistant trainees.

Changes to the pending rule were adopted by the Idaho State Board of Medicine on December 7, 2018, and include changing Paragraph 028.01.d, the allowable number of physician assistants supervised by a single supervising physician or alternate supervising physician, from three (3) to four (4).

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this Bulletin. The complete text of the proposed rule was published in the November 7, 2018, Idaho Administrative Bulletin, [Vol. 18-11, pages 78–90](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund. This rule eliminates registration of physician assistant trainees, which will reduce the Board's annual income by approximately \$1700.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 7th day of December, 2018.

Anne K. Lawler, JD, RN, Executive Director
Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706
Phone: (208) 327-7000
Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

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

PUBLIC HEARING
Thursday, December 6, 2018 – 3:00 p.m. to 5:00 p.m.

345 W. Bobwhite Court, Suite 150
Idaho State Board of Medicine
Boise, Idaho 83706

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The purpose of this proposed rulemaking is to update and clarify the Board's rules regarding physician assistant licensure and practice, and to ensure that the physician assistant licensure rules are consistent with the Medical Practice Act. These rules update definitions and delete unnecessary and duplicative provisions. In addition, these rules add a physician assistant member and a public member to the Physician Assistant Advisory Committee and delete registration for physician assistant trainees.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund. This rule eliminates registration of physician assistant trainees, which will reduce the Board's annual income by approximately \$1,700.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000. 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 December 6, 2018.

Dated this 4th day of October, 2018.

LINK: LSO Rules Analysis Memo

Italicized red text that is *double underscored* indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0103-1801

000. LEGAL AUTHORITY.

Pursuant to Section 54-1806(2), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to govern activities of persons licensed under these rules to practice as physician assistants and graduate physician assistants under the supervision of persons licensed to practice medicine ~~and surgery~~ or osteopathic medicine ~~and surgery~~ in Idaho. (3-16-04)(____)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 22.01.03, “Rules for the Licensure of Physician Assistants.” (3-19-99)

02. Scope. Pursuant to Idaho Code, Section 54-1807~~(2)~~⁽²¹⁾, physician assistants and graduate physician assistants must be licensed with the Board prior to commencement of activities. (3-16-04)(____)

002. WRITTEN INTERPRETATIONS.

~~Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking process in the adoption of these rules are available for review and copying at cost from the~~ In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Board of Medicine, 1755 Westgate Drive, Suite 140, P.O. Box 83720, Boise, Idaho 83720-0058 office. (3-16-04)(____)

003. ADMINISTRATIVE APPEAL.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, “Idaho Rules of Administrative Procedures of the Attorney General” ~~and IDAPA 22.01.07, “Rules of Practice and Procedure of the Board of Medicine.”~~ (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Alternate Supervising Physician. A physician registered with the Board, as set forth in IDAPA 22.01.04, “Rules of the Board of Medicine for Registration of Supervising and Directing Physicians,” under an agreement as defined in these rules, who is responsible for supervising the physician assistant or graduate physician assistant in the temporary absence of the supervising physician. ~~The alternate supervising physician shall accept full medical responsibility for the performance, practice, and activities of such licensee being supervised. An alternate supervising physician shall not supervise more than three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize an alternate supervising physician to supervise a total of six~~

~~(6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (3-16-04)()~~

02. Approved Program. A course of study for the education and training of physician assistants that is accredited by the Accreditation Review Commission on Education for Physician Assistants (ARC-PA) or predecessor agency or equivalent agency recognized by the Board as recommended by the Committee. (3-29-17)

03. Board. The Idaho State Board of Medicine established pursuant to Section 54-1805, Idaho Code. (3-16-04)

04. Delegation of Services (DOS) Agreement. A written document mutually agreed upon and signed and dated by the licensed physician assistant or graduate physician assistant and supervising and alternate supervising physician that defines the working relationship and delegation of duties between the supervising physician and the licensee as specified by Board rule. The Board shall review the written delegation of services agreement and may review job descriptions, policy statements, or other documents that define the responsibilities of the physician assistant or graduate physician assistant in the practice setting, and may require such changes as needed to achieve compliance with these rules, and to safeguard the public. (4-9-09)

05. Graduate Physician Assistant. A person who is a graduate of an approved program for the education and training of physician assistants and who meets all the requirements in this chapter for Idaho licensure, but: (3-16-04)

a. Has not yet taken and passed the certification examination and who has been authorized by the Board, as defined in Subsection 036.01 of these rules, to render patient services under the direction of a supervising physician for a period of six (6) months; or (3-16-04)

b. Has passed the certification examination but who has not yet obtained a college baccalaureate degree and who has been authorized by the Board, as defined in Subsection 036.02 of these rules, to render patient services under the direction of a supervising physician for a period of not more than five (5) years. (3-16-04)

06. Physician. A physician who holds a current active license issued by the Board to practice medicine ~~and surgery~~ or osteopathic medicine ~~and surgery~~ in Idaho and is in good standing with no restrictions upon or actions taken against his license. (3-16-04)()

07. Physician Assistant. A person who is a graduate of an approved ~~physician assistant training~~ program and who is qualified by specialized education, training, experience and personal character, as ~~defined required~~ in Section 021 of these rules, and who has been licensed by the Board to render patient services under the direction of a supervising and alternate supervising physician. (4-9-09)()

~~**08. Physician Assistant Trainee.** A person who is undergoing training at an approved program as a physician assistant and registered with the Board. (3-16-04)~~

~~**09. Supervision.** The direction and oversight of the activities of and patient services provided by a physician assistant or graduate physician assistant by a supervising physician or alternate supervising physician who accepts full medical responsibility with respect thereto. The constant physical presence of the supervising or alternate supervising physician is not required as long as the supervisor and such licensee are or can be easily in contact with one another by radio, telephone, or other telecommunication device. The scope and nature of the supervision shall be outlined in a delegation of services agreement, as defined in Subsection 030.04 of these rules. (3-29-17)~~

~~**10. Supervising Physician.** A physician registered by the Board, as set forth in IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians," and under an agreement as defined in Subsection 030.04 of these rules, who is responsible for the direction and supervision of the activities of and patient services provided by the physician assistant or graduate physician assistant. ~~The supervising physician accepts full medical responsibility for the activities of and patient services provided by such licensee. A supervising physician shall not supervise more than a total of three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize a supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting~~~~

~~adequate safeguards to protect the public health and safety.~~

~~(3-29-17)()~~

011. PHYSICIAN ASSISTANT ADVISORY COMMITTEE.

A Physician Assistant Advisory Committee is hereby created and made a part of the Idaho State Board of Medicine, pursuant to adoption of Resolution 01-093. (3-16-04)

01. Committee Appointments. The Board shall appoint the members of the Physician Assistant Advisory Committee. In making appointments to the Committee, the Board shall give consideration to recommendations made by professional organizations of physician assistants and physicians. ~~If recommendations are not made within sixty (60) days of notification and request, the Board may make appointments of any qualified individuals. In the event of a vacancy in one (1) of the positions, professional organizations may recommend, as soon as practical, at least two (2) and not more than three (3) persons to fill that vacancy. The Board shall appoint, as soon as practical, one (1) person, who shall fill the unexpired term. If such professional organizations do not provide a recommendation, the Board shall appoint a person to the unexpired term.~~ The Board may remove any Committee member for misconduct, incompetency, or neglect of duty after giving the member a written statement of the charges and an opportunity to be heard thereon. The Executive Director of the Idaho State Board of Medicine shall serve as the Executive Director to the Physician Assistant Advisory Committee. (3-16-04)()

02. Makeup of Committee. The Committee shall consist of ~~three (3)~~ **five (5)** members appointed by the Board. ~~Each Four (4) members shall be currently licensed as a physician assistants in Idaho and has been actively practicing as a physician assistant in Idaho for three (3) year immediately preceding appointment who are residents in this state and engaged in the active practice of medicine in this state, and one (1) member shall be a public member.~~ Members will serve a term of three (3) years and terms will be staggered. Members may serve two (2) successive terms. The Committee shall elect a chairman from its membership. The Committee shall meet as often as necessary to fulfill its responsibilities. Members will be compensated according to Section 59-509(np), Idaho Code. (3-16-04)()

03. Final Decisions. The Committee shall have no authority to revoke licenses or impose limitations or conditions on licenses issued under this chapter and shall be authorized only to make recommendations to the Board. The Board shall make all final decisions with respect thereto. (3-16-04)

04. Board Affiliation. The Committee will work in the following areas in conjunction with and make recommendations to the Board and will perform such other duties and functions assigned to the Committee by the Board, including: (3-16-04)

- a. Evaluating the qualifications of applicants for licensure and registration; (3-16-04)
- b. Performing investigations of misconduct and making recommendations regarding discipline; (3-16-04)
- c. Maintaining a list of currently licensed physician assistants and graduate physician assistants in this state; and (3-16-04)
- d. Advising the Board on rule changes necessary to license and regulate physician assistants and graduate physician assistants in this state. (3-16-04)

012. -- 019. (RESERVED)

020. APPLICATION.

01. License Applications. All applications for licensure as physician assistants and graduate physician assistants shall be made to the Board on forms supplied by the Board and include the nonrefundable application fee. The application form shall be verified and shall require the following: (4-9-09)

- a. Certificate of graduation from an approved program as defined in Subsection 010.02 and evidence of having received a college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school

accredited by another such agency approved by the Board. (3-29-17)

b. Proof of current certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board; (3-29-17)

c. The disclosure of any criminal charges, convictions or guilty pleas against the applicant other than minor traffic offenses; (4-9-09)

d. The current mental and physical condition of the applicant, ~~together with disclosure of any previous physical or mental illness~~ including any issue that may impact the applicant's ability to render patient services as a physician assistant or graduate physician assistant; (4-9-09) ()

e. The disclosure of any past or pending medical malpractice actions against the applicant, and the judgments or settlements, if any, of such claims exceeding fifty thousand dollars (\$50,000); (4-9-09)

f. The disclosure of any disciplinary action by any country or state board of medicine, medical society, professional society, hospital or institution staff; (4-9-09)

g. The disclosure of the refusal to issue or renew a license to render patient services as a physician assistant or graduate physician assistant by any state, Canadian or foreign licensing authority; (4-9-09)

h. References to include one (1) letter of recommendation signed by a licensed physician who have known the applicant professionally for at least one (1) year; (4-9-09)

i. An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than four inches tall by three inches wide (4" x 3"), taken not more than one (1) year prior to the date of the application; (4-9-09)

j. A certified copy of a full set of the applicant's fingerprints on forms supplied by the board that shall be forwarded to the Idaho Department of Law Enforcement and to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database; (4-9-09)

k. The employment history and past practice locations of the applicant; (4-9-09)

~~**l.** Each state or country in which the applicant has applied for a license to practice as physician assistant or graduate physician assistant; (4-9-09)~~

~~**m.** Each state or country wherein the applicant is licensed to practice as physician assistant or graduate physician assistant; and (4-9-09)~~

~~**n.** Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency. (4-9-09)~~

02. Reapplication. If more than two (2) years have elapsed since a licensed physician assistant or graduate physician assistant has actively engaged in practice, reapplication to the Board as a new applicant is required. The Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-16-04)

03. Application Expiration. An application for licensure that is not granted or license not issued within one (1) year from the date the application is received by the Board shall expire. However, the applicant may file an application to the Committee for an extension. In its discretion, the Committee may make a determination if extraordinary circumstances exist that justify extending the one (1) year time period up to an additional one (1) year. The Committee can recommend to the Board to grant the request for such extension of time. The Board shall make all final decisions with respect thereto. (3-29-17)

021. REQUIREMENTS FOR LICENSURE.

01. Residence. No period of residence in Idaho shall be required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request ~~only~~. The Board shall refuse to issue a license or renew a license if the applicant is not lawfully present in the United States. (4-9-09)()

02. English Language. Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request ~~only~~. (4-9-09)()

03. Educational Requirement. Applicants for licensure shall have completed an approved program as defined in Subsection 010.02 and shall provide evidence of having received a college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board. (3-29-17)

04. Certification. Current certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board. (3-29-17)

05. Personal Interview. The Board may at its discretion, require the applicant or the supervising physician or both to appear for a personal interview. (3-19-99)

06. Completion of ~~Form~~ Application. (3-16-04)

~~a.~~ If the applicant is to practice in Idaho, he must submit payment of the prescribed fee and a completed ~~form~~ application provided by the Board ~~indicating:~~ (3-16-04)()

~~i.~~ ~~The applicant has completed a delegation of services agreement signed by the applicant, supervising physician and alternate supervising physicians; and~~ (3-16-04)

~~ii.~~ ~~The agreement is on file at each practice location and the address of record of the supervising physician and at the central office of the Board; or~~ (3-16-04)

~~b.~~ ~~If the applicant is not to practice in Idaho, he must submit payment of the prescribed fee and a completed form provided by the Board indicating the applicant is not practicing in Idaho and prior to practicing in Idaho, the applicant will meet the requirements of Subsections 021.06.a.i. and 021.06.a.ii.~~ (3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

028. SCOPE OF PRACTICE.

01. Scope. The scope of practice of physician assistants and graduate physician assistants shall be defined in the delegation of services and may include a broad range of diagnostic, therapeutic and health promotion and disease prevention services. (3-16-04)

a. The scope of practice shall include only those duties and responsibilities delegated to the licensee by their supervising and alternate supervising physician and in accordance with the delegation of services agreement and consistent with the expertise and regular scope of practice of the supervising and alternate supervising physician. (3-29-17)

b. The scope of practice may include prescribing, administering, and dispensing of medical devices and drugs, including the administration of a local anesthetic injected subcutaneously, digital blocks, or the application of topical anesthetics, while working under the supervision of a licensed medical physician. (3-29-17)

c. Physician assistants and graduate physician assistants are agents of their supervising and alternate supervising physician in the performance of all practice-related activities and patient services. (4-9-09)

d. A supervising physician or alternate supervising physician shall each not supervise more than a total of ~~three~~ four (3-4) physician assistants or graduate physician assistants contemporaneously. ()

e. The Board, however, may authorize a supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. ~~An alternate supervising physician shall not supervise more than three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize an alternate supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety.~~ (3-16-04)()

(BREAK IN CONTINUITY OF SECTIONS)

030. PRACTICE STANDARDS.

01. Identification. The physician assistant; or graduate physician assistant ~~and physician assistant trainee~~ must at all times when on duty wear a placard or plate so identifying himself. (3-16-04)()

02. Advertise. No physician assistant; or graduate physician assistant ~~or physician assistant trainee~~ may advertise or represent himself either directly or indirectly, as a physician. (3-16-04)()

03. Supervising Physician. Each licensed physician assistant and graduate physician assistant shall have a Board-approved supervising physician prior to practice. (3-29-17)

04. Delegation of Services Agreement. Each licensed physician assistant and graduate physician assistant shall maintain a current copy of a Board-approved Delegation of Services (DOS) Agreement between the licensee and each of his supervising and alternate supervising physicians. The delegation of services agreement, made upon a form provided by the Board, shall include a listing of the licensee's training, experience and education, and ~~defines the~~ patient services to be delegated. It is the responsibility of the licensee and supervising physician to maintain a current delegation of services agreement. ~~All specialized procedures that need prior review and approval by the Board will be listed on the delegation of services agreement form supplied by the Board. Prior to provision, all licensees requesting to provide any of the listed services will be required to send their delegation of services agreement to the Board for approval. The Board may require the supervising physician to provide written information, which will include his affidavit attesting to the licensee's qualifications and clinical abilities to perform the specific procedures listed in the delegation of services agreement. The primary supervising physician(s) must submit an affidavit attesting to the physician assistant's education, qualifications, and clinical abilities to perform specialized procedures as well as their own qualifications.~~ This agreement shall be sent to the Board and must be maintained on file at each practice location and at the address of record of the supervising and alternate supervising physician. The Committee will review this agreement in conjunction with and make recommendations to the Board. The Board may require such changes as needed to achieve compliance with this chapter and Title 54, Chapter 18, Idaho Code, and to safeguard the public. This agreement shall include: (3-29-17)()

a. Documentation of the licensee's education, training, and experience and a listing of the specific patient services that will be performed by the licensee; (4-9-09)

b. The specific locations and facilities in which the licensee will function; and (3-16-04)

c. The written plans and methods to be used to ensure responsible direction and control of the activities and patient services rendered by the licensee that shall provide for: (3-16-04)

i. An on-site visit at least monthly; (3-19-99)

ii. Regularly scheduled conferences between the supervising physician and the licensee; (3-16-04)

iii. Periodic review of a representative sample of records and a periodic review of the patient services being provided by the licensee. This review shall also include an evaluation of adherence to the delegation of services agreement; (3-16-04)

iv. Availability of the supervising and alternate supervising physician to the licensee in person or by telephone and procedures for providing backup and supervision in emergency situations; and (4-9-09)

v. Procedures for addressing situations outside the scope of practice of the licensee. (3-16-04)

d. The drug categories or specific legend drugs and controlled drugs, Schedule II through V that will be prescribed provided that the legend drugs and controlled drugs shall be consistent with the regular prescriptive practice of the supervising physician. (3-15-02)

05. Notification of Change or Addition of Supervising or Alternate Supervising Physician. A physician assistant or graduate physician assistant must notify the Board when adding, changing, or deleting a supervising physician or alternate supervising physician. Such notification shall comply with the requirements of Subsection 030.04 of this rule, and include: ~~(3-29-17)()~~

a. The name, business address and telephone number of the new or additional supervising physician(s) or alternate supervising physician(s); (3-29-17)

b. The name, business address, and telephone number of the physician assistant or graduate physician assistant; and (3-29-17)

~~c. Comply with the requirements of Subsection 030.04. (3-29-17)~~

~~d. All supervising physicians and alternate supervising physicians must comply with the requirements of IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians." (3-29-17)~~

06. On-Site Review. The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of physician assistants or graduate physician assistants and the locations and facilities in which the licensees practice at such times as the Board deems necessary. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

036. GRADUATE PHYSICIAN ASSISTANT.

01. Licensure Prior to Certification Examination -- Board Consideration. Any person who has graduated from an approved physician assistant training program and meets all Idaho requirements, including achieving a college baccalaureate degree, but has not yet taken and passed the certification examination, may be considered by the Board for licensure as a graduate physician assistant for six (6) months when an application for licensure as a graduate physician assistant has been submitted to the Board on forms supplied by the Board and payment of the prescribed fee, provided: ~~(3-16-04)()~~

~~a. An application for licensure as a graduate physician assistant has been submitted to the Board on forms supplied by the Board and payment of the prescribed fee. (3-16-04)~~

~~b.a.~~ The applicant shall submit to the Board, within ten (10) business days of receipt, a copy of acknowledgment of sitting for the national certification examination. The applicant shall also submit to the Board, within ten (10) business days of receipt, a copy of the national certification examination results. (4-9-09)

~~b.b.~~ After the graduate physician assistant has passed the certification examination, the Board must receive verification of national certification directly from the certifying entity. Once the verification is received by the Board, the graduate physician assistant's license will be converted to a permanent license and he may apply for

prescribing authority pursuant to Section 042 of these rules. (3-16-04)

d. The applicant who has failed the certification examination one (1) time, may petition the Board for a one-time extension of his graduate physician assistant license for an additional six (6) months. (3-16-04)

e. If the graduate physician assistant fails to pass the certifying examination on two (2) separate occasions, the graduate physician assistant's license shall automatically be canceled upon receipt of the second failing certification examination score. (3-16-04)

f. The graduate physician assistant applicant shall agree to execute an authorization for the release of information, attached to his application as Exhibit A, authorizing the Board or its designated agents, having information relevant to the application, including but not limited to the status of the certification examination, to release such information, as necessary, to his supervising physician. (3-16-04)

02. Licensure Prior to College Baccalaureate Degree -- Board Consideration. Licensure as a graduate physician assistant may also be considered upon application made to the Board on forms supplied by the Board and payment of the prescribed fee when all application requirements have been met as set forth in Section 021 of these rules, except receipt of documentation of a college baccalaureate degree, provided: (3-16-04)()

a. ~~All application requirements have been met as set forth in Section 021, except receipt of documentation of a college baccalaureate degree.~~ A college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board shall be completed within five (5) years of initial licensure in Idaho; (3-16-04)()

b. A personal interview with the applicant or the supervising physician or both may be required and will be conducted by a designated member of the Board; and (3-16-04)

c. A plan for the completion of the college baccalaureate degree shall be submitted with the application and shall be approved by the Board ~~for the completion of the college baccalaureate degree.~~ (3-16-04)()

03. No Prescribing Authority. Graduate physician assistants shall not be entitled to issue any written or oral prescriptions unless granted an exemption by the Board. Application for an exemption must be in writing and accompany documentation of a minimum of five (5) years of recent practice as a physician assistant in another state. (3-29-17)()

04. Weekly Record Review. Graduate physician assistants shall be required to have a weekly record review by their supervising physician, unless subject to an exemption as granted in Subsection 036.03. (3-29-17)

037. DISCIPLINARY PROCEEDINGS AND NOTIFICATION OF CHANGE.

01. Discipline. Every person licensed as a physician assistant or graduate physician assistant is subject to discipline pursuant to the procedures and powers established by and set forth in Section 54-1806A, Idaho Code and the Administrative Procedures Act. (3-16-04)

02. Grounds for Discipline. In addition to the grounds for discipline set forth in Section 54-1814, Idaho Code and IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine ~~and Surgery~~ and Osteopathic Medicine ~~and Surgery~~ in Idaho," Section 101, persons licensed under these rules are subject to discipline upon the following grounds if that person: (3-16-04)()

a. Held himself out, or permitted another to represent him, to be a licensed physician; (3-16-04)

b. Had in fact performed otherwise than at the discretion and under the supervision of a physician licensed by and registered with the Board; (3-16-04)

c. Performed a task or tasks beyond the scope of activities allowed by Section 028 of these rules;

(3-16-04)

- d. ~~Is a habitual or excessive user of~~ Excessively or abusively uses intoxicants or drugs; (3-16-04)()
- e. Demonstrated manifest incapacity to carry out the functions of a physician assistant or graduate physician assistant; (3-16-04)
- f. Failed to have a Board-approved supervising physician prior to practice; (3-29-17)
- g. Failed to complete or maintain a current copy of the Board-approved delegation of services agreement as specified by Section 030 of these rules; (3-29-17)
- h. Aided or abetted a person not licensed in this state who directly or indirectly performs activities requiring a license; (3-16-04)
- i. Failed to report to the Board any known act or omission of a licensee, applicant, or any other person, that violates any provision of these rules; or (3-16-04)
- j. Interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient, Board or Physician Assistant Advisory Committee, Board staff, hearing officer, or witness ~~to prevent them from providing evidence~~ in an attempt to influence the outcome of a disciplinary proceeding, investigation or other legal action. (3-16-04)()
- k. Failed to submit to the Board, within ten (10) business days of receipt, a copy of acknowledgment of sitting for the national certification examination, and failed to submit a copy of the national certification examination results within ten (10) business days of receipt. (4-9-09)
- l. Engaging in a pattern of unprofessional or disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; provided that such behavior does not have to cause actual patient harm to be considered unprofessional or disruptive. ()

03. Notification of Change or Addition of Supervising or Alternate Supervising Physician. A physician assistant or graduate physician assistant must notify the Board prior to changing supervising physicians or alternate supervising physicians or adding an additional supervising physician. Such notification shall comply with the requirements of Subsection 030.03 of these rules, and include: (3-29-17)()

- a. The name, business address and telephone of the new or additional supervising physician or alternate supervising physician(s); and (3-16-04)()
- b. The name, business address, and telephone number of the physician assistant or graduate physician assistant; ~~and~~ (3-16-04)()
- ~~c. Comply with the requirements of Subsection 030.03.~~ (3-16-04)
- ~~d.~~ All supervising physicians and alternate supervising physicians must comply with the requirements of IDAPA 22.01.041, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians the Licensure to Practice Medicine and Osteopathic Medicine in Idaho." (3-16-04)()

038. -- 040. (RESERVED)

~~041. PHYSICIAN ASSISTANT TRAINEE.~~

~~01. **Registration in Training.** Any person undergoing training at an approved program as a physician assistant must register with the Board as a trainee, and must comply with the rules as set forth herein. All applications for registration shall be made to the Board on forms supplied by the Board and include payment of the~~

~~prescribed fee. All registrations shall be dependent upon the length of an approved program and shall be issued for a period of not more than two (2) years. All registrations shall expire on the expiration date printed on the face of the certificate and shall become invalid after that date. All applications for an extension of not more than two (2) years of current registration as a physician assistant trainee shall be made to the Board on forms supplied by the Board and include payment of the prescribed fee.~~ (3-16-04)

~~02. **Approved Program.** Notwithstanding any other provision of these rules, a trainee may perform patient services when such services are rendered within the scope of an approved program.~~ (7-1-93)

~~03. **Registration Fees.** The nonrefundable fee for registration as physician assistant trainee shall be no more than one hundred dollars (\$100). The nonrefundable fee for a one (1) time extension of a current registration as physician assistant trainee shall be no more than one hundred dollars (\$100).~~ (4-9-09)

042. PRESCRIPTION WRITING.

01. Approval and Authorization Required. A physician assistant may issue written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V only in accordance with approval and authorization granted by the Board and in accordance with the current delegation of services agreement and shall be consistent with the regular prescriptive practice of the supervising or alternate supervising physician. (4-9-09)

02. Application. A physician assistant who wishes to apply for prescription writing authority shall submit to the Board an application for such purpose on forms supplied by the Board. In addition to the information contained in the general application for physician assistant approval, the application for prescription writing authority shall include the following information: (3-16-04)

a. Documentation of all pharmacology course content completed, the length and whether a passing grade was achieved (at least thirty (30) hours). (7-1-93)

b. A statement of the frequency with which the supervising physician will review prescriptions written or issued. (3-16-04)

c. A signed affidavit from the supervising physician certifying that, in the opinion of the supervising physician, the physician assistant is qualified to prescribe the drugs for which the physician assistant is seeking approval and authorization. (3-16-04)

d. The physician assistant to be authorized to prescribe Schedule II through V drugs shall be registered with the Federal Drug Enforcement Administration and the Idaho Board of Pharmacy. (3-15-02)

03. Prescription Forms. Prescription forms used by the physician assistant must ~~be printed with the name, address, and telephone number of the physician assistant and of the supervising physician. A physician assistant shall not write prescriptions or complete or issue prescription blanks previously signed by any physician~~ comply with Idaho Board of Pharmacy Rule, IDAPA Section 27.01.03.302, Prescription Drug Order: Minimum Requirements. (3-16-04)()

04. Record Keeping. The physician assistant shall maintain accurate records, accounting for all prescriptions issued and medication delivered. (3-16-04)

05. Pharmaceutical Samples. The physician assistant who has prescriptive authority may request, receive, sign for and distribute professional samples of drugs and devices in accordance with his current delegation of services agreement and consistent with the regular prescriptive practice of the supervising physician. (3-16-04)

06. Prescriber Drug Outlet. The physician assistant who has prescriptive authority may dispense prescriptive drugs or devices directly to patients ~~under the direction of the supervising physician and~~ in accordance with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy." (3-20-14)()

07. Controlled Substances for Office Use. The physician assistant who has prescriptive authority may order controlled substances for office use or distribution in accordance with the regulations of the Drug Enforcement

Administration and the Idaho Board of Pharmacy and under the direction of the supervising physician. (3-29-17)

043. -- 050. (RESERVED)

051. FEES -- LICENSE ISSUANCE, RENEWAL, CANCELLATION AND REINSTATEMENT.

All licenses to practice as a physician assistant or graduate physician assistant shall be issued for a period of not more than five (5) years. All licenses shall expire on the expiration date printed on the face of the certificate and shall become invalid after that date unless renewed. The Board shall collect a fee for each renewal year. The failure of any person to renew his license shall not deprive such person of the right to renewal, except as provided for herein and Title 67, Chapter 52, Idaho Code. All Fees are nonrefundable. (3-27-13)

01. Licensure Fee. The fee for initial licensure shall be no more than two hundred fifty dollars (\$250) for a physician assistant and graduate physician assistant. (4-9-09)

02. License Renewal Fee. The Board shall collect a fee of no more than one hundred fifty dollars (\$150) for each renewal year of a license. (4-9-09)

03. License Cancellation. (3-16-04)

a. Failure to renew a license to practice as a physician assistant and pay the renewal fee shall cause the license to be canceled. However, such license can be renewed up to two (2) years following cancellation by payment of past renewal fees, plus a penalty fee of fifty dollars (\$50). After two (2) years, an initial application for licensure with payment of the appropriate fee shall be filed with the Board. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (4-9-09)

b. Failure to renew a license to practice as a graduate physician assistant and pay the renewal fee shall cause the license to be canceled. However, such license can be renewed up to six (6) months following cancellation by payment of the past renewal fee, plus a penalty fee of no more than one hundred dollars (\$100). After six (6) months, an original application for licensure with payment of the appropriate fee shall be filed with the Board. (4-9-09)

04. Inactive License. (3-16-04)

a. A person holding a current license issued by the Board to practice as a physician assistant may be issued, upon written application provided by the Board and payment of required fees to the Board, an inactive license on the condition that he will not engage in the provision of patient services as a physician assistant in this state. An initial inactive license fee of no more than one hundred fifty dollars (\$150) shall be collected by the Board. (3-16-04)

b. Inactive licenses shall be issued for a period of not more than five (5) years and such licenses shall be renewed upon payment of an inactive license renewal fee of no more than one hundred dollars (\$100) for each renewal year. The inactive license certificate shall set forth its date of expiration. (3-16-04)

c. An inactive license may be converted to an active license to practice as a physician assistant upon written application and payment of required conversion fees of no more than one hundred fifty dollars (\$150) to the Board. The applicant must account for the time during which an inactive license was held and document continuing competence. The Board may, in its discretion, require a personal interview to evaluate the applicant's qualifications. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-16-04)

05. Volunteer License. (4-9-09)

a. License. Upon completion of an application and verification of qualifications, the Board may issue a volunteer license to a physician assistant who is retired from active practice for the purpose of providing physician assistant service to people who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular medical treatment. (4-9-09)

b. Retired Defined. A physician assistant previously holding a license to practice as a physician

assistant in Idaho or another state shall be considered retired if, prior to the date of the application for a volunteer's license, he has: (4-9-09)

i. Allowed his license with active status to expire with the intent of ceasing active practice as a physician assistant for remuneration; or (4-9-09)

ii. Converted his active license to an inactive status with the intention of ceasing to actively practice physician assistant for remuneration; or (4-9-09)

iii. Converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice as a physician assistant. (4-9-09)

c. Eligibility. A physician assistant whose license has been restricted, suspended, revoked surrendered, resigned, converted, allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action shall not be eligible for a volunteer license. The volunteer license cannot be converted to a license with active, inactive or temporary status. (4-9-09)

d. Application. The application for a volunteer license shall include the requirements listed in Section 021 of these rules, except for the certification requirement in Subsection 021.04 of these rules. In addition, the application shall include ~~the following:~~ (3-29-17)

~~i.~~ ~~V~~erification that the applicant held an active physician assistant license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer license. (4-9-09)()

~~ii.~~ The Board may at its discretion issue a volunteer license to a physician assistant who has not held an active license in good standing for greater than five (5) years if the applicant has completed an examination acceptable to the Board that demonstrates the applicant possesses the knowledge and skills required to practice as a physician assistant. (4-9-09)

06. **Temporary Licensure Fee.** The fee for temporary licensure, which may be prorated pursuant to Section 54-1808, Idaho Code, shall be no more than one hundred eighty dollars (\$180). (3-27-13)

~~052. **EFFECTIVE DATE.**~~

~~These rules shall be effective May 5, 1982. Prescriptive privileges and further amendments effective March 24, 1989. Protocols and further amendments shall be effective after March 30, 1992. Amendments providing graduate physician's assistant registration effective April 2, 1993. (7-1-93)~~

~~053. **DELEGATION OF SERVICES AGREEMENT.**~~

~~Within one hundred twenty (120) days of the effective date of these rules, all currently licensed physician assistants and graduate physician assistants shall have a written delegation of services agreement as specified in Section 030 of these rules. (3-16-04)~~

0542. -- 999. (RESERVED)

IDAPA 22 – BOARD OF MEDICINE

22.01.04 – RULES OF THE BOARD OF MEDICINE FOR REGISTRATION OF SUPERVISING AND DIRECTING PHYSICIANS

DOCKET NO. 22-0104-1801 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The Notice of Proposed Rule Repeal was published in the November 7, 2018 Idaho Administrative Bulletin, **Vol. 18-11, page 91**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 7th day of December, 2018.

Anne K. Lawler, JD, RN, Executive Director
Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706
Phone: (208) 327-7000
Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures to repeal a rule. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

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

PUBLIC HEARING
Thursday, December 6, 2018 – 3:00 p.m. to 5:00 p.m.

345 W. Bobwhite Court, Suite 150
Idaho State Board of Medicine
Boise, Idaho 83706

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board of Medicine is promoting regulatory reform by streamlining and combining its rules and reducing obstacles to licensure and practice. The purpose of this proposed rulemaking is to combine all provisions which apply to licensure and registration of physicians into IDAPA 22.01.01, Rules of the Board of Medicine for the Licensure to Practice Medicine and Osteopathic Medicine in Idaho. The provisions from IDAPA 22.01.04 relating to the registration of supervising and directing physicians will be merged into IDAPA 22.01.01 to consolidate physician licensure and registration provisions. As a result, IDAPA 22.01.04 will be repealed.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000. 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 December 6, 2018.

Dated this 4th day of October, 2018.

[LINK: LSO Rules Analysis Memo](#)

IDAPA 22.01.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 22 – BOARD OF MEDICINE
22.01.05 – GENERAL PROVISIONS OF THE BOARD OF MEDICINE
DOCKET NO. 22-0105-1801 (NEW CHAPTER)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 7, 2018, Idaho Administrative Bulletin, [Vol. 18-11, pages 92 through 98](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 7th day of December, 2018.

Anne K. Lawler, JD, RN, Executive Director
Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706
Phone: (208) 327-7000
Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

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

PUBLIC HEARING
Thursday, December 6, 2018 – 3:00 p.m. to 5:00 p.m.

345 W. Bobwhite Court, Suite 150
Idaho State Board of Medicine
Boise, Idaho 83706

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the intended proposed rulemaking and the principal issues involved:

The purpose of this proposed rulemaking is to combine the general provisions of the Board of Medicine and its allied health boards and committee into one section. The current provisions regarding complaint investigation from IDAPA 22.01.14 and telehealth practice from IDAPA 22.01.15 will be moved into this section to consolidate provisions that apply to all licensees of the Board of Medicine into one section.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund. This rule also has no fiscal impact on the Board of Medicine funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000.

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 December 6, 2018.

Dated this 4th day of October, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0105-1801

IDAPA 22
TITLE 01
CHAPTER 05

22.01.05 – GENERAL PROVISIONS OF THE BOARD OF MEDICINE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 54-1806(2), and 54-5713, Idaho Code. ()

001. TITLE AND SCOPE.

The title of this chapter is IDAPA 22.01.05, “General Provisions of the Board of Medicine.” This chapter has the following scope: these rules govern general aspects of Board of Medicine operations, complaint investigation and telehealth services. ()

002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES.

In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Board of Medicine office. ()

003. ADMINISTRATIVE APPEAL.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, “Idaho Rules of Administrative Procedures of the Attorney General.” ()

004. PUBLIC RECORD ACT COMPLIANCE.

These rules have been adopted in accordance with Title 67, Chapter 52, Idaho Code and are public records. ()

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 345 W. Bobwhite Court, Suite 150, Boise, ID 83706. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 377-7005. The Board's office hours for filing documents are 8:00 a.m. to 5:00 p.m. ()

006. FILING OF DOCUMENTS – NUMBER OF COPIES.

All original documents and one (1) electronic copy in rulemaking or contested case proceedings must be filed with the office of the Board. ()

007. -- 149. (RESERVED)

150. COMPLAINTS.

All received complaints, related to allegations against health care providers regulated by the Board, shall be referred to the appropriate Medical Investigator (MI). ()

151. FORMAT FOR SUBMISSION OF COMPLAINT.

Complaints shall be submitted in writing to the Board, and include, but not limited to, the name of the provider, the approximate date of the incident or care, the concerns regarding the incident or care, e-mail address, telephone number, and mailing address. ()

152. DETERMINATION OF AUTHORITY.

After preliminary investigation, the MI shall determine if the complaint falls within the Board’s statutory authority as defined in the appropriate practice act and rules. Questions related to jurisdiction shall be referred to the Executive Director and/or Board Counsel. ()

01. Outside Statutory Authority. If the complaint falls outside of the Board’s statutory authority, the MI shall notify the complainant in writing and may offer referral to an appropriate agency, if indicated. The Board shall maintain a copy of the complaint, response, and the preliminary investigation file for a period of one (1) year. Each complaint determined to be outside the Board’s statutory authority shall be reviewed by the Committee on Professional Discipline at its next scheduled meeting. ()

02. Within Statutory Authority. If the complaint falls within the Board’s authority, the MI shall: ()

- a.** Establish a complaint file; ()
- b.** Assign a case number; ()
- c.** Enter the complaint information into the Board’s database. ()
- d.** Correspond in writing to the complainant within ten (10) business days, when possible, and provide written information regarding the complaint process; ()
- e.** Correspond in writing to the provider within ten (10) business days, when possible, explaining the nature of the complaint and provide written information regarding the complaint process; ()
- f.** Monitor the case to insure the provider has replied and correspond in writing to the complainant and the provider advising of the case’s status at least every forty-five (45) to sixty (60) days. ()
- g.** The MI may request any additional information deemed necessary to fully investigate the complaint, including, but not limited to: ()
 - i.** Interviewing the complainant and the respondent; ()
 - ii.** Requesting additional records, documents, or statements; and ()
 - iii.** Collecting collateral information. ()

153. COMPLAINT AUTHORITY.

At the time the case is opened, the MI shall assign a priority rating* (*rating may change at any point in the investigation as new information is received) to the investigation according to the following table:

CATEGORY	DESCRIPTION
1	Imminent, or current danger to the public.
2	Threat to the public, currently monitored or controlled.

CATEGORY	DESCRIPTION
3	Identified as having practice, skills, or judgment concern considered a potential threat to the public.
4	Medium to low risk to public.
5	Low risk to public.

()

01. Category One. Cases assigned as Category one (1) shall be immediately reported to the Executive Director for appropriate action. ()

02. Category Two. Cases assigned as Category two (2) is shall be reported to the Executive Director for appropriate action. ()

154. REPORT OF INVESTIGATION.

Upon receipt of the response and documentation obtained from the investigation, the MI shall prepare a report containing the following: ()

01. Provider Information. The name of the provider, address, specialty, and date of Board meeting. ()

02. Previous Complaints. A summary of previous complaints lodged against the provider. ()

03. Complaint Concerns. A copy and summary of the complainant's concerns. ()

04. Provider's Response. A copy and summary of the provider's response. ()

05. MI Review. A summary of the MI review of medical records/documentation. ()

06. Other Relevant Documentation. Additional relevant documentation may be attached as appropriate based on the nature of the complaint, response, and summary. ()

07. Summary of Additional Information. A copy and written summary of any additional interviews or information collected in the course of the investigation. ()

155. TRACKING.

The Board, upon review and consideration of the recommendation made by the Committee on Professional Discipline (COPD) or respective Board or Committee, makes a determination upon the merits of the case and may take action to impose sanctions or limitations or conditions on licenses or permits issued: ()

01. Case is Closed. If the Board determines to close, the MI shall correspond in writing to the complainant and provider notifying each of the Board's final determination and action subject to federal and state law. ()

02. Further Investigation is Requested. If the Board determines further investigation is necessary to fully adjudicate the case, the MI shall obtain the requested information and prepare a summary as described in Section 020 of these rules. The complainant and provider shall be notified in writing of the Board determination and the case's status. ()

03. Consultant is Requested. If the Board determines a medical consultant is necessary to fully

adjudicate the case, the MI shall engage an appropriate medical consultant to review the case and submit a written report of findings to the Board. Such medical consultant may be recently retired from or currently in a clinical practice similar to the named provider. The Board shall define the focus, scope and depth of the medical consultant's review. The medical consultant shall be: ()

- a. Board certified; ()
- b. Free from current Board review such as no open complaints or pending formal action; and ()
- c. Free from conflicts and disqualification. Medical consultants shall disqualify themselves and, on motion of any interested party may, on proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias which interferes with their fair and impartial service. ()
- d. The medical consultant must sign an independence statement before commencing the review. ()

04. Stipulation and Order is Issued. If the Board determines the case warrants issuance of a stipulation and order, a Board attorney shall generate the stipulation and order and submit to the named provider for signature. The MI shall complete the stipulation checklist as indicated by the nature of the stipulation, identify the monitoring requirements and establish a monitoring plan for the provider. ()

05. Other Disciplinary Action Directed. If the Board determines other disciplinary actions are warranted, the MI shall act under the guidance of the Executive Director and/or Board counsel. ()

06. Opportunity to Meet with Committee. The named provider shall be provided an opportunity to meet with the COPD or Board staff prior to the initiation of formal disciplinary proceedings. ()

07. Recording of Board Action. The MI shall update the database and the case file to reflect the Board's determination and action on the reviewed cases. ()

156. AUTHORITY TO CLOSE COMPLAINTS/CASES.
The Board is solely authorized to close complaints and cases. All complaints and cases must be presented to the respective Board for consideration and recommendation to the Board. ()

157. OTHER INDICATORS FOR INVESTIGATION.

01. Board Investigations. The Board may commence any investigation on its own initiative or on the basis on performance indicators. ()

02. Performance Indicators. Performance indicators that may be used include, but are not limited to: ()

- a. Frequent changes in geographical practice location. ()
- b. Number of inactive licenses held. ()
- c. Number of malpractice complaints. ()
- d. Number of complaints lodged with the Board. ()
- e. Failure to receive specialty board certification. ()
- f. Changes in area/specialty of practice without formal retraining. ()
- g. Health status. ()
- h. Illness. Mental or physical illness, including but not limited to, deterioration through the aging ()

- process, or loss of motor skill; or excessive use or abuse of drugs, including alcohol. ()
- i.** Prescribing practices. ()
 - j.** Physicians without hospital privileges or medical practice affiliation who are not routinely subject to peer review. ()
 - k.** Provider performance and outcome data received from sources such as Professional Review Organizations. ()
 - l.** Disciplinary reports from managed care organizations. ()
 - m.** Disciplinary reports by other state and government agencies. ()
 - n.** Reports from outside sources of a pattern of unprofessional or disruptive behavior that could adversely affect patient care. ()

158. -- 200. (RESERVED)

201. DEFINITIONS PERTAINING TO TELEHEALTH SERVICES IN IDAHO.

01. Asynchronous Store and Forward Transfer. “Asynchronous store and forward transfer” means the transmission of a patient’s health care information from an originating site to a provider at a distant site over a secure connection that complies with state and federal security and privacy laws. ()

02. Distant Site. “Distant site” means the site at which a provider delivering telehealth services is located at the time the service is provided. ()

03. Originating Site. “Originating site” means the location of a patient at the time telehealth services are provided. ()

04. Provider. “Provider” means a person who is licensed, required to be licensed, or, if located outside of Idaho, would be required to be licensed if located in Idaho, pursuant to Title 54, Idaho Code, to deliver health care consistent with his or her license. ()

05. Synchronous Interaction. “Synchronous interaction” means real-time communication through interactive technology that enables a provider and a patient at two (2) locations separated by distance to interact simultaneously through two-way video and audio or audio transmission. ()

06. Telehealth Services. “Telehealth services” means health care services provided by a provider to a person through the use of electronic communications, information technology, asynchronous store and forward transfer or synchronous interaction between a provider at a distant site and a patient at an originating site. Such services include, but are not limited to, clinical care, health education, home health and facilitation of self-managed care and caregiver support. ()

202. IDAHO LICENSE REQUIRED.

Any physician, physician assistant, respiratory therapist, polysomnographer, dietitian, or athletic trainer who provides any telehealth services to patients located in Idaho must hold an active Idaho license issued by the Idaho State Board of Medicine for their applicable practice. ()

203. PROVIDER-PATIENT RELATIONSHIP.

In addition to the requirements set forth in Section 54-5705, Idaho Code, during the first contact with the patient, a provider licensed by the Idaho State Board of Medicine who is providing telehealth services shall: ()

- 01. Verification.** Verify the location and identity of the patient; ()
- 02. Disclose.** Disclose to the patient the provider's identity, their current location and telephone number

and Idaho license number; ()

03. Consent. Obtain appropriate consents from the patient after disclosures regarding the delivery models and treatment methods or limitations, including a special informed consent regarding the use of telehealth technologies; and ()

04. Provider Selection. Allow the patient an opportunity to select their provider rather than being assigned a provider at random to the extent possible. ()

204. STANDARD OF CARE.

A provider providing telehealth services to patients located in Idaho must comply with the applicable Idaho community standard of care. The provider shall be personally responsible to familiarize themselves with the applicable Idaho community standard of care. If a patient's presenting symptoms and conditions require a physical examination, lab work or imaging studies in order to make a diagnosis, the provider shall not provide diagnosis or treatment through telehealth services unless or until such information is obtained. ()

205. INFORMED CONSENT.

In addition to the requirements of Section 54-5708, Idaho Code, evidence documenting appropriate patient informed consent for the use of telehealth technologies must be obtained and maintained at regular intervals consistent with the community standard of care. Appropriate informed consent should, at a minimum, include the following terms: ()

01. Verification. Identification of the patient, the provider and the provider's credentials; ()

02. Telehealth Determination. Agreement of the patient that the provider will determine whether or not the condition being diagnosed and/or treated is appropriate for telehealth services; ()

03. Security Measures Information. Information on the security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy and notwithstanding such measures; ()

04. Potential Information Loss. Disclosure that information may be lost due to technical failures. ()

206. MEDICAL RECORDS.

As required by Section 54-5711, Idaho Code, any provider providing telehealth services as part of his or her practice shall generate and maintain medical records for each patient. The medical record should include copies of all patient-related electronic communications, including patient-physician communications, prescriptions, laboratory and test results, evaluations and consultations, relevant information of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with the provision of telehealth services should also be documented in the medical record. The patient record established during the provision of telehealth services must be accessible and documented for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records. ()

207. -- 999. (RESERVED)

IDAPA 22 – BOARD OF MEDICINE

22.01.07 – RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF MEDICINE

DOCKET NO. 22-0107-1801 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The Notice of Proposed Rule Repeal was published in the November 7, 2018, Idaho Administrative Bulletin, [Vol. 18-11, page 99](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 7th day of December, 2018.

Anne K. Lawler, JD, RN, Executive Director
Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706
Phone: (208) 327-7000
Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures to repeal a rule. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

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

PUBLIC HEARING
Thursday, December 6, 2018 – 3:00 p.m. to 5:00 p.m.

345 W. Bobwhite Court, Suite 150
Idaho State Board of Medicine
Boise, Idaho 83706

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board of Medicine is promoting regulatory reform by streamlining and combining its rules and reducing obstacles to licensure and practice. The purpose of this proposed rulemaking is to combine provisions which apply to the Board of Medicine and its allied health boards and committee into one section, entitled "General Provisions." The provisions from IDAPA 22.01.07 will be combined with the provisions regarding complaint investigation from IDAPA 22.01.14 and telehealth practice from IDAPA 22.01.15 and merged into a new IDAPA 22.01.05 to consolidate provisions that apply to all licensees of the Board of Medicine. As a result, IDAPA 22.01.07 will be repealed.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000. 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 December 6, 2018.

Dated this 4th day of October, 2018.

[LINK: LSO Rules Analysis Memo](#)

IDAPA 22.01.07 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 22 – BOARD OF MEDICINE

22.01.14 – RULES RELATING TO COMPLAINT INVESTIGATION

DOCKET NO. 22-0114-1801 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The Notice of Proposed Rule Repeal was published in the November 7, 2018, Idaho Administrative Bulletin, [Vol. 18-11, page 100](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 7th day of December, 2018.

Anne K. Lawler, JD, RN, Executive Director
Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706
Phone: (208) 327-7000
Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures to repeal a rule. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

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

PUBLIC HEARING
Thursday, December 6, 2018 – 3:00 p.m. to 5:00 p.m.

345 W. Bobwhite Court, Suite 150
Idaho State Board of Medicine
Boise, Idaho 83706

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board of Medicine is promoting regulatory reform by streamlining and combining its rules and reducing obstacles to licensure and practice. The purpose of this proposed rulemaking is to combine provisions which apply to the Board of Medicine and its allied health boards and committee into one section, entitled "General Provisions." The provisions of IDAPA 22.01.14 regarding complaint investigation will be combined with the general provisions from IDAPA 22.01.07 and the provisions regarding telehealth practice from IDAPA 22.01.15 and merged into a new IDAPA 22.01.05 to consolidate provisions that apply to all licensees of the Board of Medicine. As a result, IDAPA 22.01.14 will be repealed.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000. 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 December 6, 2018.

Dated this 4th day of October, 2018.

[LINK: LSO Rules Analysis Memo](#)

IDAPA 22.01.14 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 22 – BOARD OF MEDICINE
22.01.15 – RULES RELATING TO TELEHEALTH SERVICES
DOCKET NO. 22-0115-1801 (CHAPTER REPEAL)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The Notice of Proposed Rule Repeal was published in the November 7, 2018, Idaho Administrative Bulletin, [Vol. 18-11, page 101](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 7th day of December, 2018.

Anne K. Lawler, JD, RN, Executive Director
Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706
Phone: (208) 327-7000
Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures to repeal a rule. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

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

PUBLIC HEARING
Thursday, December 6, 2018 – 3:00 p.m. to 5:00 p.m.

345 W. Bobwhite Court, Suite 150
Idaho State Board of Medicine
Boise, Idaho 83706

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board of Medicine is promoting regulatory reform by streamlining and combining its rules and reducing obstacles to licensure and practice. The purpose of this proposed rulemaking is to combine provisions which apply to the Board of Medicine and its allied health boards and committee into one section, entitled "General Provisions." The provisions of IDAPA 22.01.15 regarding telehealth practice will be combined with the general provisions from IDAPA 22.01.07 and the provisions regarding complaint investigation from IDAPA 22.01.14 and merged into a new IDAPA 22.01.05 to consolidate provisions that apply to all licensees of the Board of Medicine. As a result, IDAPA 22.01.15 will be repealed.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000. 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 December 6, 2018.

Dated this 4th day of October, 2018.

[LINK: LSO Rules Analysis Memo](#)

IDAPA 22.01.15 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 23 – BOARD OF NURSING
23.01.01 – RULES OF THE IDAHO BOARD OF NURSING
DOCKET NO. 23-0101-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1404, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 335 through 341](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sandra Evans, Executive Director, at (208) 577-2482.

Dated this 1st day of November, 2018.

Sandra Evans
Executive Director
Idaho Board of Nursing
280 N. 8th St., Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Phone: (208) 577-2482
Fax: (208) 334-3262

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-1404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Under current rule, students graduating from a nursing education program can't remain employed as a nursing assistant in a non-licensed capacity. This causes financial hardship to the graduates while they wait for confirmation of passing the licensing examination. The rulemaking seeks to alleviate this hardship by granting recent graduates a reasonable time-frame for receipt of the necessary paperwork before they are no longer eligible for nursing assistant status. Another board rule addressing multistate licensing is being deleted because it is no longer necessary given the recently passed Enhanced Nurse License Compact and withdrawal on January 19, 2018 from the previous Nurse Licensure Compact to which the rules apply. Finally, the current rule requiring certain information in prescription forms used by advanced practice nurses is unnecessarily complex and inconsistent with similar forms used by physicians and other authorized prescribers in Idaho. The rulemaking seeks to correct this irregularity.

BON Rule 76 is being amended to expand the definition of a "nurse apprentice" to include persons recently graduated (up to three months) from a nursing educational program; BON Rule 77 (multistate licensure) will be removed; and BON Rule 315 will be amended to make the information required on prescription forms used by advanced practice nurses uniform with information required on prescription forms used by physicians and other authorized prescribers licensed 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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because: (1) the proposed change to the nurse apprentice rule was requested by a nurse educator, is very minor in nature and will have no opposition and will benefit nursing programs, nursing students and recent graduates, employers of nurse apprentices and the public; (2) the proposed change to the rule on multistate licensure is required by superseding statute; and (3) the proposed change to the content of prescription forms used by advanced practice nurses will fully comply with all state and federal law, while making the forms uniform with similar forms used by other Idaho prescribers.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, Executive Director, at (208) 577-2482.

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 26, 2018.

Dated this 3rd day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-1801

076. PERSONS EXEMPTED BY BOARD.

Licensure to practice nursing shall not be required, nor shall the practice of nursing be prohibited for persons exempted by the Board including: (11-28-84)

01. Technicians and Technologists. Technicians and technologists who comply with Section 491 of these rules. (3-30-07)

02. Non-Resident Nurses. Non-resident nurses currently licensed in good standing in another nursing jurisdiction, who are in Idaho on a temporary basis because of enrollment in or presentation of a short term course of instruction recognized or approved by the Board and who are performing functions incident to formal instruction. (4-4-13)

03. Family Members and Others. (7-1-93)

a. Family members providing care to a person to whom they are related by blood, marriage, adoption, legal guardianship or licensed foster care. (5-21-89)

b. Non-family members who provide gratuitous care to a person on a temporary basis in order to give respite to family members who regularly provide care to that person. (5-21-89)

c. Live-in domestics, housekeepers and companions provided they do not represent themselves as, nor receive compensation as, licensed nurses or other nursing care providers and so long as any health care provided is incidental to the services for which they are employed. (3-30-01)

04. Nurse Apprentice. A nurse apprentice is a ~~currently enrolled~~ nursing student **or recent graduate** who is employed for remuneration in a non-licensed capacity **outside the student role** by a Board approved health care agency. (~~3-30-01~~)()

a. Applicants for nurse apprentice shall: (3-30-01)

i. Be enrolled in an accredited/approved nursing education program that is substantially equivalent to Idaho's approved programs for practical/registered nursing. (6-20-92)

ii. Be in good academic standing at the time of application and notify the Board of any change in academic standing. (6-20-92)

iii. Meet the employing agency's health care skills validation requirements. (3-30-01)

iv. Satisfactorily complete a basic nursing fundamentals course. (3-30-01)

v. Use obvious designations that identify the applicant as a nurse apprentice. (3-30-01)

- b.** A completed application for nurse apprentice shall consist of: (3-30-01)
- i. Completed application form provided by the Board, to include a fee of ten dollars (\$10); and (7-1-93)
 - ii. Verification of satisfactory completion of a basic nursing fundamentals course; and (3-30-01)
 - iii. Validation of successful demonstration of skills from a nursing education program; and (3-30-01)
 - iv. Verification of ~~on-going~~ good academic standing ~~in nursing education program.~~ ~~(3-30-01)~~()
- c.** An individual whose application is approved shall be issued a letter identifying the individual as a nurse apprentice for a designated time period ~~to extend not more than three (3) months after successful completion of the nursing education program.~~ ~~(3-30-01)~~()
- d.** A nurse apprentice may, under licensed registered nurse supervision, perform all functions approved by the Board for unlicensed assistive personnel as set forth in Section 490 of these rules. (3-30-07)

05. Employer Application. (3-30-01)

- a.** A completed application for health care agencies wishing to employ nurse apprentices shall consist of: (3-30-01)
- i. Completed application form provided by the Board; (6-20-92)
 - ii. Job descriptions for apprentice; (3-30-01)
 - iii. A written plan for orientation and skill validation; (6-20-92)
 - iv. The name of the licensed registered nurse who shall be accountable and responsible for the coordination or management of the nurse apprentice program; (3-30-01)
 - v. Assurance that a licensed registered nurse is readily available when nurse apprentice is working; (3-30-01)
 - vi. A written procedure for the nurse apprentice who is asked to perform a task that could jeopardize a patient and who declines to perform the task; and (3-30-01)
 - vii. A fee of one hundred dollars (\$100). (3-30-01)
- b.** Following application review, the Board may grant approval to a health care agency to employ nurse apprentices for a period of up to one (1) year. (3-30-01)
- c.** To insure continuing compliance with Board requirements, each approved agency shall submit an annual report to the Board on forms provided by the Board. Based on its findings, the Board may grant continuing approval annually for an additional one (1) year period. (6-20-92)
- d.** At any time, if the employing agency fails to inform the Board of changes in conditions upon which approval was based or otherwise fails to comply with established requirements, the Board may notify the agency of withdrawal of approval. (6-20-92)

~~077. MULTISTATE LICENSURE.~~

~~01. Definitions. In Section 077, the following terms have the meanings indicated. (3-15-02)~~

~~a. Board means the regulatory body responsible for issuing nurse licenses. (3-15-02)~~

- ~~**b.** Compact means the Nurse Multistate Licensing Compact. (3-15-02)~~
- ~~**c.** Coordinated Licensure Information System (CLIS) means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (3-15-02)~~
- ~~**d.** Home state means the party state that is the nurse's primary state of residence. (3-15-02)~~
- ~~**e.** Party state means a state that is a signatory on the compact. (3-15-02)~~
- ~~**f.** Primary state of residence means the state of a person's declared fixed permanent and principal home for legal purposes; domicile. (3-29-10)~~
- ~~**g.** Public means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (3-15-02)~~
- ~~**02. Examination.** No applicant may be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX (National Council Licensure Examination): (4-4-13)~~
- ~~**a.** NCLEX-RN for registered nursing; or (4-6-05)~~
- ~~**b.** NCLEX-PN for practical nursing. (4-6-05)~~
- ~~**03. Issuance of License in Compact Party State.** (3-15-02)~~
- ~~**a.** A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (3-15-02)~~
- ~~**i.** Driver's license with a home address; (3-15-02)~~
- ~~**ii.** Voter registration card displaying a home address; (3-29-10)~~
- ~~**iii.** Federal income tax return declaring the primary state of residence; (3-29-10)~~
- ~~**iv.** Military Form No. 2058—state of legal residence certificate; or (3-29-10)~~
- ~~**v.** W2 from U.S. Government or any bureau, division, or agency thereof, indicating the declared state of residence. (3-29-10)~~
- ~~**b.** A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state. (3-29-10)~~
- ~~**c.** A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license. (3-29-10)~~
- ~~**d.** When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance. (3-29-10)~~
- ~~**e.** A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ninety (90) days. (3-20-14)~~
- ~~**f.** The licensure application in the new home state of a nurse under pending investigation by the~~

~~former home state shall be held in abeyance, and the ninety (90) day period in Paragraph 077.03.e. of these rules shall be stayed until resolution of the pending investigation. (3-20-14)~~

~~g. The former home state license is not valid upon the issuance of a new home state license. (3-15-02)~~

~~h. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (3-15-02)~~

~~**04. Multistate Licensure Privilege Limitations. (3-15-02)**~~

~~a. Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's practice to the home state during pendency of the disciplinary order or agreement. (3-15-02)~~

~~b. The requirement referred to in Paragraph 077.04.a. of these rules may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. (3-30-07)~~

~~e. An individual who had a license that was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued. (3-29-10)~~

~~**05. Information System. (3-15-02)**~~

~~a. Levels of Access. (3-15-02)~~

~~i. Public access to nurse licensure information shall be limited to: (3-15-02)~~

~~(1) The licensee's name; (3-15-02)~~

~~(2) Jurisdictions of licensure; (3-15-02)~~

~~(3) Licensure expiration date; (3-15-02)~~

~~(4) Licensure classification and status; (3-15-02)~~

~~(5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (3-15-02)~~

~~(6) The status of multistate licensure privileges. (3-15-02)~~

~~ii. Non party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (3-15-02)~~

~~iii. Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non-party state authority. (3-15-02)~~

~~b. Right to Review. (3-15-02)~~

~~i. The licensee may request, in writing, to the home state board to review data relating to the licensee in the CLIS. (3-15-02)~~

~~ii. If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (3-15-02)~~

- ~~iii. Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in the CLIS. (3-15-02)~~
- ~~e. Changes in Disciplinary Data. (3-15-02)~~
- ~~i. Within ten (10) business days, the Board shall report to CLIS: (3-15-02)~~
 - ~~(1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is required to remain nonpublic by the contributing state authority; (3-15-02)~~
 - ~~(2) Dismissal of the complaint; and (3-15-02)~~
 - ~~(3) Changes in status of disciplinary action, or licensure encumbrance. (3-15-02)~~
- ~~ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (3-15-02)~~
 - ~~(1) A disciplinary action; (3-15-02)~~
 - ~~(2) An agreement or order requiring participation in alternative programs; (3-15-02)~~
 - ~~(3) An agreement or agreements, which limit practice or require monitoring; or (3-15-02)~~
 - ~~(4) Dismissal of a complaint. (3-15-02)~~
- ~~iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (3-15-02)~~

07&7. -- 089. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

315. PRESCRIPTIVE AND DISPENSING AUTHORIZATION FOR ADVANCED PRACTICE REGISTERED NURSES.

01. Initial Authorization. An application for the authority to prescribe and dispense pharmacologic and non-pharmacologic agents may be made as part of initial licensure application or by separate application at a later date. Advanced practice registered nurses who complete their APRN graduate or post-graduate educational program after December 31, 2015, will automatically be granted prescriptive and dispensing authority with the issuance of their Idaho license. (7-1-13)

a. An advanced practice registered nurse who applies for authorization to prescribe pharmacologic and non-pharmacologic agents within the scope of practice for the advanced practice role, shall: (7-1-13)

i. Provide evidence of completion of thirty (30) contact hours of post-basic education in pharmacotherapeutics obtained as part of study within a formal educational program or continuing education program, related to advanced nursing practice; and (7-1-13)

ii. Submit a completed, notarized application form provided by the Board. (7-1-99)

b. Exceptions to the pharmacotherapeutic education may be approved by the Board. (7-1-99)

c. Prescriptions written by authorized advanced practice registered nurses shall ~~comply with~~ contain all ~~applicable state and federal laws and be signed by~~ the minimum information required by Idaho Board of

Pharmacy administrative rules for “prescription drug orders” (currently codified at IDAPA 27.01.03.302), as well as the printed name and signature of the nurse prescriber, ~~with and~~ the abbreviation for the applicable role of the advanced nursing practice, ~~the identification number assigned by the Board and where applicable, the Idaho Board of Pharmacy nurse (i.e. “CNP,” “CNM,” “CNS,” or CRNA”). If the prescription is for a~~ controlled substance, ~~it shall also include the DEA registration number and address of the federal Drug Enforcement Agency registration number~~ prescriber. (7-1-13)()

02. Temporary Authorization. The Board may grant temporary prescriptive authority to an applicant who holds a temporary advanced practice registered nurse license and who meets the requirements for initial authorization pursuant to Subsection 315.01 of these rules. (7-1-99)

03. Expiration of Temporary Prescriptive Authorization. Temporary prescriptive authorization automatically expires on the expiration, revocation, suspension, placement on probation, or denial of any advanced practice registered nurse license. (7-1-99)

04. Prescribing and Dispensing Authorization. All authorized advanced practice registered nurses may prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws. (7-1-13)

05. Valid Advanced Practice Registered Nurse/Patient Relationships. (7-1-13)

a. An advanced practice registered nurse shall not dispense pharmacologic agents except in the course of his professional practice and when a bona fide advanced practice registered nurse/patient relationship has been established. A valid relationship will exist when the advanced practice registered nurse has obtained sufficient knowledge of the patient’s medical condition through examination and has assumed responsibility for the health care of the patient. (7-1-13)

b. A valid advanced practice registered nurse/patient relationship is not required when dispensing or prescribing medications under the circumstances set forth at Section 54-1733(4), Idaho Code. (7-1-13)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.03.01 – RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-707, 54-708, 54-710, and 67-2614, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The Board of Chiropractic Physicians' pending rules will allow the Board to consider current qualifications for applicants applying by endorsement. This change would allow the Board to not require all endorsement applicants to take and pass the National Board Special Purposes Examination for Chiropractors (SPEC). The rules clarify the procedure to put a license into inactive status, to renew it, and to return it to active status in alignment with the 2017 amendments to the Chiropractic Practice Act, and establish a reinstatement fee.

The rule includes a procedure for reissuance of a clinical nutrition certification when an inactive license is reactivated. Continuing education options for licensees are improved by expanding distance learning opportunities and by adding a carryover option and hardship waiver. An outdated requirement that the Board approve new schools of chiropractic is removed as unnecessary, along with a rulemaking history.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 269-274](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 8th day of November, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 Board of Chiropractic Physicians' proposed rules will allow the Board to consider current qualifications for applicants applying by endorsement. This change would allow the Board to not require all endorsement applicants to take and pass the National Board Special Purposes Examination for Chiropractors (SPEC). The rules clarify the procedure to put a license into inactive status, to renew it, and to return it to active status in alignment with the 2017 amendments to the Chiropractic Practice Act, and establish a reinstatement fee.

The rule includes a procedure for reissuance of a clinical nutrition certification when an inactive license is reactivated. Continuing education options for licensees are improved by expanding distance learning opportunities and by adding a carryover option and hardship waiver. An outdated requirement that the Board approve new schools of chiropractic is removed as unnecessary, along with a rulemaking history.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 29th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0301-1801

100. APPLICATIONS (RULE 100).

- 01. Application.** Applications on forms furnished by the Bureau of Occupational Licenses must be accompanied by an unmounted passport photograph taken within the twelve (12) months preceding the date of application. (3-15-02)
- 02. Qualifications.** (7-1-93)
- a.** New applicants will meet the following requirements: (7-1-93)
- i.** National Boards Parts I, II, III, and IV. (7-1-99)
- ii.** Graduation from a CCE approved college or university. (7-1-93)
- iii.** Applicants will be required to sign an affidavit swearing under oath that they have fully reviewed and understand and will abide by the Chiropractic Act, Title 54, Chapter 7, Idaho Code, and the Board's Rules, IDAPA 24, Title 03, Chapter 01, "Rules of the State Board of Chiropractic Physicians." (7-1-99)
- b.** Endorsement applicants will meet the following requirements: (7-1-93)
- i.** Successful passage of the National Boards Parts which were in effect at the time of graduation from chiropractic college and physiotherapy. (4-2-08)
- ii.** If licensed prior to January, 1980, CCE approved college or university not required. If licensed after January, 1980, applicant must have graduated from a CCE approved college or university. (7-1-93)
- iii.** Five (5) years of consecutive practice without discipline immediately prior to application ~~in another state without discipline~~ and holds a current, valid license to practice in a state, territory, or district of the United States or Canada. (~~4-2-08~~)()
- iv.** Applicants must demonstrate that they possess the requisite qualifications to provide the same standard of chiropractic care as provided by physicians in this state. The Board may, in its sole discretion, require further examination to establish such qualifications, such as passage of the National Board Special Purposes Examination for Chiropractors (SPEC). (~~7-1-99~~)()
- v.** Applicants will be required to sign an affidavit swearing under oath that they have fully reviewed and understand and will abide by the Chiropractic Act, Title 54, Chapter 7, Idaho Code, and the Board's Rules, IDAPA 24, Title 03, Chapter 01, "Rules of the State Board of Chiropractic Physicians." (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

250. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 250).

- 01. Expiration Date.** All chiropractic licenses expire and must be renewed annually in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be canceled. (5-3-03)
- 02. Reinstatement.** Any license canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the reinstatement fee shall be two hundred fifty dollars (\$250)

and the applicant shall submit proof of having met the required continuing education for the year of reinstatement. (5-3-03)

03. Canceled License. A licensee ~~that~~ whose license has been canceled for a period of more than five (5) years may ~~be re-issued~~ apply for a new license in accordance with section 67-2614, Idaho Code. ~~(5-3-03)~~()

251. -- 299. (RESERVED)

300. ~~RENEWAL REQUIREMENT~~ INACTIVE LICENSE (RULE 300).

A licensee holding a current active license in this state who is not practicing chiropractic in this state may be issued an inactive license in accordance with Section 54-708(2), Idaho Code, as follows: ()

~~**01. Active Status.** Each renewal application must be accompanied by:~~ (7-1-93)
~~a. The established fee; and~~ (7-1-93)
~~b. Certification of having attended and completed a minimum of twelve (12) hours of scientific clinics, forums, or chiropractic study within the previous twelve (12) months, as approved by the Idaho Board of Chiropractic Physicians. Effective January 1, 2009, certification of having attended and completed a minimum of eighteen (18) hours of scientific clinics, forums, or chiropractic study within the previous twelve (12) months, as approved by the board.~~ (4-2-08)

021. Inactive Status. Each application for an Inactive status license must be accompanied by: (3-15-02)

a. The established fee; and (3-15-02)

b. A written request application to change a current active license to an inactive license. ~~(3-15-02)~~()

c. An inactive license shall be issued for one (1) year. ()

~~**03. Waiving Continued Education Requirements.** All continued education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing in Idaho. Inactive license renewal notices and licenses will be marked "Inactive." When the licensee desires active status, he must show acceptable fulfillment of continuing educational requirements for the current year and submit a fee equivalent to the difference between the inactive and active renewal fee. The continuing educational requirement and the fees will not be prorated for a partial year.~~ (3-15-02)

02. Inactive License Status Renewal. ()

a. An inactive license must be renewed annually by submitting the established fee and renewal application. Inactive licenses not renewed will be canceled. ()

b. An inactive license canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the reinstatement fee shall be one hundred fifty dollars (\$150). ()

c. Inactive license renewals and licenses will be marked "inactive." ()

d. An inactive license holder may not practice in Idaho while on inactive status. ()

e. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho. ()

03. Return to Active Status of License Inactive for Five (5) or Fewer Years. An inactive license holder whose license has been inactive for five (5) or fewer years may convert from inactive to active license status by: ()

- a.** Making written application to the Board on a form prescribed by the Board; ()
- b.** Providing documentation to the Board showing successful completion within the previous twelve (12) months of the continuing education requirements for renewal of an active license; and ()
- c.** Paying a fee equivalent to the difference between the current inactive fee and the active renewal fee. ()

04. Return to Active Status of License Inactive for More Than Five (5) Years. An inactive license holder whose license has been inactive for more than five (5) years may convert from inactive to active license status by; ()

- a.** Making written application to the Board on a form prescribed by the Board. ()
- b.** Providing an account to the Board for that period of time during which the license was inactive and fulfilling requirements that demonstrate competency to resume practice. Those requirements may include, but are not limited to, education, supervised practice, and examination as determined by the Board. The Board may consider practice in another jurisdiction in determining competency. ()
- c.** Paying a fee equivalent to the difference between the current inactive fee and the active renewal fee. ()

05. Clinical Nutrition Certificate Expires. If a licensee holds a clinical nutrition certificate and places their license on inactive status, the clinical nutrition certificate is immediately canceled as though the license was not timely renewed as provided in Section 703 of these rules. ()

06. Reissuance of Clinical Nutrition Certificate. An inactive license holder who held a clinical nutrition certificate at the time their license was placed on inactive status who returns to active license status pursuant to this rule may be reissued a clinical nutrition certificate by showing proof of compliance with the provisions of Sections 704, 705, and 706 that apply to their situation. ()

301. -- 349. (RESERVED)

350. CONTINUING EDUCATION (RULE 350).

In order to further protect the public health and to facilitate the administration of the Chiropractic Act, the board has formulated the following rules All licensees must comply with the following continuing education requirements: (7-1-93)()

01. Subject Material Requirement. ~~The subject material of the continuing education requirement shall be germane to the practice of chiropractic and either;~~ Applicants for renewal shall be required to complete a minimum of eighteen (18) hours of continuing education within the preceding twelve (12) months, as approved by the Board. (3-15-02)()

a. ~~Sponsored by an approved school of chiropractic; or~~ Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. (3-15-02)()

b. ~~Otherwise approved by the board~~ The educational setting may include a classroom, conference/ seminar, on-line, a virtual classroom or home study. (3-15-02)()

c. ~~“Germane to the practice of chiropractic” shall be limited to Section 54-704(1), Idaho Code~~ If the licensee completes two (2) or more courses having substantially the same content during any one (1) renewal period, the licensee only will receive continuing education credit for one (1) of the courses. (3-15-02)()

02. Verification of Attendance Documentation. ~~It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the applicant. This verification shall be maintained by the licensee and provided to the Board upon the request of the Board or its agent~~ Each licensee shall

maintain documentation verifying continuing education attendance and curriculum for a period of five (5) years from the date of completion. This documentation will be subject to audit by the Board. (3-15-02)()

a. Documented evidence of meeting the continuing education requirement shall be in the form of a certificate or letter from the sponsoring entity that includes verification of attendance by the licensee, the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. ()

b. A licensee must submit the verification documentation to the Board if requested by the Board. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the licensee may be subject to disciplinary action. ()

~~03. **Distance Learning and Home Study Waiver.** The board may approve a course of study for continuing education credit that does not include the actual physical attendance of the applicant in a face to face setting with the course instructor. Distance Learning or Home Study courses shall be eligible for continuing education credits if sponsored by an approved school of chiropractic or upon approval by the board. Licensee shall not accumulate more than six (6) continuing education hours per renewal period from distance learning or home study.~~ The Board may waive the requirements of this rule for reasons of individual hardship including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. (4-2-08)()

~~04. **Requests for Approval Carryover of Continuing Education Hours.** All requests for approval or pre-approval of educational programs must be made to the board in writing, and must be accompanied by a statement that includes the name of the instructor or instructors, the date and time and location of the course, the specific agenda for the course, the number of continuing education credit hours requested, and a statement of how the course is believed to be pertinent to the practice of chiropractic.~~ Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. Hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. (3-15-02)()

05. **Exemption.** A licensee is exempt from the continuing education requirements under this section for the period between the initial issuance or the original license and the first expiration date of that license. ()

351. APPROVAL OF CONTINUING EDUCATION COURSES (RULE 351).

01. **Approved Continuing Education Courses.** Approved continuing education courses shall be those courses, programs, and activities that are germane to the practice of chiropractic, as defined in Sections 54-704(1) and (2), Idaho Code, and meet the general requirements and content requirements of these rules, and are approved, sponsored, or provided by the following entities or organizations, or otherwise approved by the Board: ()

a. Council of Chiropractic Education (CCE) approved chiropractic college or university, a college or university accredited by a nationally recognized accrediting agency as recognized by the United States Secretary of Education or an educational program approved by the Board; ()

b. Providers of Approved Continuing Education (PACE); ()

c. National and state chiropractic associations; and ()

d. **Provider Course Approval.** Other courses that may be approved by the Board based upon documentation submitted by a continuing education provider. Requests for approval of courses made by the provider must be submitted on a form approved by the Board that includes: ()

i. The nature and subject of the course and how it is germane to the practice of chiropractic; ()

ii. The name of the instructor(s) and their qualifications; ()

iii. The date, time, and location of the course; ()

- iv. The specific agenda for the course; ()
- v. The number of continuing education hours requested; ()
- vi. The procedures for verification of attendance; and ()
- vii. Other information as may be requested by the Board. ()
- viii. Upon review of all information requested, the Board may deny any request for a course that does not meet the requirements of Idaho law or rule. Board approval of a course shall be granted for a period not to exceed two (2) years or until the course materials or instructors are changed, whichever may occur first. ()

02. Licensee Course Approval. Other courses that may be approved by the Board based upon documentation submitted by the licensee. All requests for approval must be made to the Board in writing and include the nature and subject of the course and its relevancy to the practice of chiropractic, name of instructor(s) and their qualifications, date, time and location of the course, and procedures for verification of attendance. ()

3542. -- 399. (RESERVED)

400. APPROVED SCHOOLS OF CHIROPRACTIC (RULE 400).

01. Requirement for Approval. (7-1-93)

a. The Idaho Board of Chiropractic Physicians will consider only that school or college or university of chiropractic as a reputable school, college or university of chiropractic in good standing if such school, college or university conforms to the requirements of "recognized candidate for accreditation," or "accredited" of the Council of Chiropractic Education or any foreign country college which meets equivalent standards as determined by the Idaho Board of Chiropractic Physicians and teaches accredited courses in all the subjects set forth in Section 54-709(1)(b), Idaho Code. (7-1-93)

b. Regardless of the Council on Chiropractic Education status, the Board may make additional requirements for approval as a reputable school, college or university of Chiropractic. (7-1-93)

02. New Schools. Those graduates of new schools of chiropractic will only be accepted for licensure application provided the school reaches "recognized candidate for accreditation" status with the Council on Chiropractic Education within one year following the first graduating class *and are approved by the Idaho Board of Chiropractic Physicians.* (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

~~601. RULEMAKING HISTORY PRIOR TO JULY 1, 1993 (RULE 601).~~

*Supersedes Rules adopted September 7, 1977
Authority Chapter 7, Title 54, Idaho Code, July 1, 1980
Adopted Under Emergency Provisions, June 10, 1982
Final Adoption, August 21, 1982
As Amended December 21, 1987
Effective January 11, 1988
Adopted Under Emergency Provisions, March 29, 1993
Adopted Under Temporary Provisions, July 1, 1997 (7-1-98)*

6021. -- 604. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES
24.06.01 – RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS

DOCKET NO. 24-0601-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-3715 and 54-3717, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The current rules regarding supervision of occupational therapy assistants, limited permit holders, and aides are complex and have been a consistent source of questions for licensees. This pending rule will reduce confusion for licensees and applicants, provide more flexibility for supervisors, remove outdated language, and better organize the rules on supervision and recordkeeping. This rule also updates language in the application section, updates the Code of Ethics to reflect current terminology, and adds a section that specifies the factors that the Board will consider when reviewing an applicant with criminal or disciplinary history.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 284-293](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 54-3715, 54-3717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 current rules regarding supervision of occupational therapy assistants, limited permit holders, and aides are complex and have been a consistent source of questions for licensees. This proposed rule will reduce confusion for licensees and applicants, provide more flexibility for supervisors, remove outdated language, and better organize the rules on supervision and recordkeeping. This rule also updates language in the application section, updates the Code of Ethics to reflect current terminology, and adds a section that specifies the factors that the Board will consider when reviewing an applicant with criminal or disciplinary history.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule was discussed and decided upon during noticed, open meetings of the Board and in stakeholder meetings with members of the national and state associations.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 30th Day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0601-1801

010. DEFINITIONS.

- ~~01.~~ ~~**Association.** The Idaho Occupational Therapy Association.~~ (~~1-5-88~~)
- ~~021.~~ **Board.** The Occupational Therapy Licensure Board of Idaho. (1-5-88)
- ~~032.~~ **Bureau.** The Idaho Bureau of Occupational Licenses. (7-1-09)
- ~~03.~~ **Clients.** Clients are those persons to whom occupational therapy services are delivered. ()
- ~~04.~~ **Client-Related Tasks.** Client-related tasks are routine tasks during which the aide may interact with the client but does not act as a primary service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant assigns a selected client-related task to the aide: ()
- ~~a.~~ **The outcome of the assigned task is predictable;** ()
- ~~b.~~ **The situation of the client and the environment is stable and will not require that judgment, interpretations, or adaptations be made by the aide;** ()
- ~~c.~~ **The client has demonstrated some previous performance ability in executing the task; and** ()
- ~~d.~~ **The task routine and process have been clearly established.** ()
- ~~05.~~ **Direct Line-of-Site Supervision.** Direct line-of-sight supervision requires the supervisor's physical presence and immediate availability at the site when services are being provided to clients by the individual under supervision. ()
- ~~06.~~ **Direct Supervision.** Direct supervision requires daily, in-person contact by the supervisor at the site where services are provided to clients by the individual under supervision. ()
- ~~07.~~ **Evaluation.** Evaluation is the process of obtaining and interpreting data necessary for treatment, which includes, but is not limited to, planning for and documenting the review, specific observation, interviewing, and administering data collection procedures, which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities. ()
- ~~08.~~ **General Supervision.** General Supervision requires in-person or synchronous interaction at least once per month by an occupational therapist and contact by other means as needed. Other means of contact include, but are not limited to, electronic communications such as email. ()
- ~~09.~~ **Good Standing.** The individual's license, certification, or registration is not currently suspended or revoked by any state regulatory entity. (3-29-10)
- ~~10.~~ **Limited Permit Holder.** A person who has completed the education and experience requirements of Section 54-3706(1) and (2), Idaho Code, for an occupational therapist or occupational therapy assistant, has not yet taken or received the results of the entry level certification examination as required by Section 54-3708, Idaho Code, and Subsection 020.04.a. of these rules, and has applied for and been granted limited permit status as allowed by Section 54-3705(1), Idaho Code, and Subsection 021.03 of these rules. ()
- ~~0511.~~ **Occupational Therapist.** A person licensed to practice occupational therapy. (4-2-03)

0412. Occupational Therapy. The care and services provided by or under the direction and supervision of an occupational therapist. (3-29-10)

0913. Occupational Therapy Aide in the Delivery of Occupational Therapy Services. Also referred to in these rules as an “aide in the delivery of occupational therapy services” or “aide,” is a person who is not licensed by the Board and who provides supportive services to occupational therapists and occupational therapy assistants. ~~An aide shall function only under the guidance, responsibility and direct line-of-sight supervision of the licensed occupational therapist or an occupational therapy assistant who is appropriately supervised by an occupational therapist. The aide provides only specifically selected client related or non-client tasks for which the aide has been trained and has demonstrated competence~~ as provided in these rules. (3-29-10)()

0614. Occupational Therapy Assistant. A person licensed to practice occupational therapy, and who works under the supervision of an occupational therapist. (3-29-10)

~~**07. Graduate Occupational Therapist.** A person who holds a certificate of graduation from an approved occupational therapy curriculum, who has submitted a completed application for certification by examination, and who may practice occupational therapy in association with and under the supervision of an occupational therapist and under authority of a Limited Permit. (3-29-10)~~

~~**08. Graduate Occupational Therapy Assistant.** A person who holds a certificate of graduation from an approved occupational therapy assistant curriculum, has submitted a completed application for licensure by examination and is performing the duties of occupational therapy assistant in association with and under the supervision of an occupational therapist and under the authority of a Limited Permit. (3-29-10)~~

145. NBCOT. The National Board for Certification in Occupational Therapy, Inc., is a not-for-profit credentialing agency that provides certification for the occupational therapy profession. (3-29-10)

16. Non-Client Related Tasks. Non-client related tasks include clerical and maintenance activities and preparation of the work area or equipment. ()

17. Routine Supervision. Routine Supervision requires in-person or synchronous interaction at least once every two (2) weeks by an occupational therapist and contact by other means as needed. Other means of contact include, but are not limited to, electronic communications such as email. ()

18. Student. A person who is pursuing a supervised course of study in an accredited or approved educational program under Subsections 020.01.a. or 020.02 of this rule, or who is fulfilling the supervised fieldwork experience requirements to qualify for licensure as an occupational therapist or occupational therapy assistant. ()

19. Synchronous Interaction. Synchronous interaction means real-time communication through interactive technology that enables two (2) people at two (2) locations separated by distance to interact simultaneously through two-way video and audio or audio transmission. ()

011. SUPERVISION.

An occupational therapist shall supervise and be responsible for the patient care given by occupational therapy assistants, ~~graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants,~~ limited permit holders, and aides, and students. An occupational therapist’s or occupational therapy assistant’s failure to provide appropriate supervision in accordance with these rules is grounds for discipline. (3-29-10)()

01. Skill Levels Supervision Requirements. ~~The following skill levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides:~~ Supervision is the direction and review of service delivery, treatment plans, and treatment outcomes. Unless otherwise specified in this rule, General Supervision is the minimum level of supervision that must be provided. Methods of supervision may include, but are not limited to, Direct Line-of-Sight Supervision, Direct Supervision, Routine Supervision, or General Supervision, as needed to ensure the safe and effective delivery of occupational therapy. (4-7-11)()

~~a. *Entry Level—Working on initial skill development (zero to one (0-1) year experience) or working in a new area of practice; An occupational therapist and an occupational therapy assistant must ensure the delivery of services by the individual being supervised is appropriate for client care and safety and must evaluate:*~~ (3-29-10)()

~~i. *The complexity of client needs;*~~ ()

~~ii. *The number and diversity of clients;*~~ ()

~~iii. *The skills of the occupational therapist and the occupational therapist assistant, aide, or limited permit holder;*~~ ()

~~iv. *The type of practice setting;*~~ ()

~~v. *The requirements of the practice setting; and*~~ ()

~~vi. *Other regulatory requirements applicable to the practice setting or delivery of services.*~~ ()

~~b. *Intermediate Level—Increased independence and mastery of basic roles and functions. Demonstrates ability to respond to new situations based on previous experience (generally one to five (1-5) years' experience); Supervision must be documented in a manner appropriate to the individuals and the setting. The documentation must be kept as required by Section 013 of these rules.*~~ (3-29-10)()

~~c. *Advanced Level—Refinement of skills with the ability to understand complex issues and respond accordingly. Supervision must include consultation at appropriate intervals regarding evaluation, intervention, progress, reevaluation and discharge planning for each patient. Consultation must be documented and signed by the supervisor and supervisee.*~~ (3-29-10)()

~~02. *Supervision Levels. The following supervision levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides:*~~ (4-7-11)

~~a. *Direct Line of Site Supervision—An occupational therapist or occupational therapy assistant must provide direct line of site supervision to an aide;*~~ (3-29-10)

~~b. *Direct Supervision—Daily, direct contact at the site of work with the supervisor physically present at all times within the facility when the supervisee renders care and requires the supervisor to co-sign all documentation that is completed by the supervisee. This supervision is the minimal level of supervision required for students, for entry or intermediate level occupational therapy assistants applying deep thermal and electrotherapeutic modalities, and for advanced level occupational therapy assistants who apply such modalities while lacking the education and training required in Subsection 012.01 of these rules;*~~ (4-7-11)

~~c. *Close Supervision. The occupational therapist provides daily direction in developing the plan of treatment and inspects on-site the actual implementation of the plan at least every two (2) weeks. This supervision is the minimal level of supervision required for entry level occupational therapy assistants and graduate occupational therapy assistants;*~~ (4-4-13)

~~d. *Routine Supervision—Requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as by telephone or written communication. This supervision is the minimal level of supervision required for graduate occupational therapists and intermediate level occupational therapy assistant. It also is the minimum level of supervision required for advanced level occupational therapy assistants applying deep thermal and electrotherapeutic modalities while possessing the education and training specified in Subsection 012.01 of these rules;*~~ (4-7-11)

~~e. *General Supervision—Initial direction and periodic review of the following: service delivery; update of treatment plans; and treatment outcomes. The supervisor need not at all times be present at the premises*~~

~~where the occupational therapy assistant is performing the professional services. However, not less than monthly direct contact must be provided, with supervision available as needed by other methods. This supervision is the minimal level of supervision required for an intermediate to advanced occupational therapy assistant. (3-29-10)~~

~~**03. Supervision Ratios.** An occupational therapist may supervise up to three (3) full time occupational therapy assistants, but never more than two (2) entry level occupational therapy assistants. The total number of supervised occupational therapy assistants, non-licensed occupational therapy personnel (including any graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants, and aides), and occupational therapists in training to provide deep thermal, electrotherapeutic modalities and wound care may not exceed five (5) without prior Board approval. The Board may permit the supervision of a greater number by an occupational therapist if, in the Board's opinion, there would be adequate supervision and the public's health and safety would be served. It is the supervising occupational therapist's responsibility to notify the Board of any circumstances requiring approval of a greater number and to submit a written plan for resolution of the situation. (4-7-11)~~

~~**04. Record Keeping.** The occupational therapy assistant, graduate occupational therapist, and graduate occupational therapy assistant must maintain on file at the job site signed documentation reflecting supervision activities. This supervision documentation must contain the following: date of supervision, means of communication, and information discussed. Both the supervising occupational therapist and the person being supervised must sign each entry. (4-7-11)~~

~~**052. Occupational Therapy Assistants.** Occupational ~~T~~herapy ~~A~~ssistants ~~may deliver occupational therapy services under the supervision of occupational therapists as follows. The occupational therapy assistant:~~ must be supervised by an occupational therapist. General Supervision must be provided at a minimum. (3-29-10)()~~

~~**a.** May only select, implement, and modify therapeutic activities and interventions that are consistent with client goals, the requirements of the practice setting, and the occupational therapy assistant's demonstrated competency levels; (3-29-10)~~

~~**b.** Must not initiate a treatment program until the occupational therapist has evaluated the client and planned treatment for the client, or discharge the client from a treatment program without supervision from the occupational therapist; (3-29-10)~~

~~**c.** Must not perform an evaluation, but may contribute to the evaluation process with the supervision of the occupational therapist; (3-29-10)~~

~~**d.** May participate in the screening process by collecting data, such as records, by general observation and by conducting a general interview, and may communicate the information gathered to the occupational therapist; (3-29-10)~~

~~**e.** May track the need for reassessment, report changes in status that might warrant reassessment or referral, and administer the reassessment under the supervision of the occupational therapist; (3-29-10)~~

~~**f.** Must immediately discontinue any specific treatment procedure which appears harmful to the client, and so notify the occupational therapist; (3-29-10)~~

~~**g.** Is responsible for knowing about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement; (3-29-10)~~

~~**h.** May implement outcome measurements and provide needed client discharge resources. (3-29-10)~~

~~**03. Limited Permit Holders.** Limited permit holders must be supervised by an occupational therapist or occupational therapy assistant. Direct supervision must be provided at a minimum. The occupational therapist is responsible for the overall use and actions of the limited permit holder. ()~~

~~**064. Occupational Therapy Aides.** Occupational therapy ~~A~~aides do not provide skilled occupational~~

therapy services. An aide ~~is~~ **must be** trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. ~~An aide first must demonstrate competency to be able to perform the assigned, delegated client and non-client tasks.~~ The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out non-client **related** and client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan. ~~An aide shall function only under the direct line of sight supervision of an occupational therapist or occupational therapy assistant. An aide may provide:~~ (3-29-10)()

a. ~~Non-client related tasks, including clerical and maintenance activities and preparation of the work area or equipment~~ **Before assigning client-related and non-client related tasks to an aide, the occupational therapist or occupational therapy assistant must ensure that the aide is able to competently perform the task.** (3-29-10)()

b. ~~Client related, routine tasks during which the aide may interact with the client. The following conditions must exist when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:~~ **The occupational therapist or occupational therapy assistant must train the aide to perform client-related and non-client related tasks at least once per month.** (3-29-10)()

~~i. The outcome anticipated for the delegated task is predictable.~~ (3-29-10)

~~ii. The client and environment are stable and will not require that judgment, interpretations, or adaptations be made by the aide.~~ (3-29-10)

~~iii. The client has demonstrated some previous performance ability in executing the task.~~ (3-29-10)

~~iv. The task routine and process have been clearly established.~~ (3-29-10)

~~v. The aide has been trained and is able to demonstrate competency in carrying out the task and in using any necessary equipment.~~ (3-29-10)

~~vi. The aide has been instructed on how to specifically carry out the delegated task with the specific client.~~ (3-29-10)

~~vii. The aide knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapy assistant.~~ (3-29-10)

c. ~~The supervision of the aide needs to be documented for every client-related activity performed by an aide. Documentation must include information about frequency and methods of supervision used, the content of supervision, and the names and credentials of all persons participating in the supervisory process~~ **An aide must perform client-related tasks under the direct line-of-sight supervision of an occupational therapist or occupational therapy assistant.** (3-29-10)()

d. **Occupational therapists and occupational therapy assistants must document all training and supervision of an aide, and the documentation must be kept in a location that is consistent with standard business practices for the setting in which the occupational therapy is provided.** ()

05. Students. **Students must be under the direct on-site supervision of an occupational therapist or occupational therapy assistant who is appropriately supervised by an occupational therapist. The occupational therapist is responsible for the overall use and actions of the student.** ()

(BREAK IN CONTINUITY OF SECTIONS)

013. RECORD KEEPING.

Occupational therapists and occupational therapy assistants must maintain adequate records that are consistent with the standard business practices of the setting in which the licensee is providing occupational therapy or supervision

and that show necessary patient care, supervision provided by the licensee, and compliance with regulatory requirements applicable to the setting. Failure to maintain adequate records constitutes unprofessional conduct. ()

0134. -- 019. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

021. APPLICATION FOR LICENSURE.

01. Licensure by Examination. Each applicant for licensure by examination shall submit a completed written application to the Board, on forms prescribed by the Board, together with the application fee. The application shall be verified and under oath and shall require the following information: (7-1-99)

a. A certificate of graduation from an approved occupational therapy curriculum; or an approved occupational therapy assistant's curriculum accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or an accrediting agency recognized by the United States Secretary of Education, the Council for Higher Education Accreditation, or both; (4-2-03)

b. The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses along with a written statement of suitability for licensure as provided in Section 022 of these rules; (1-5-88)()

c. The disclosure of any disciplinary action against the applicant by any state professional regulatory agency or professional organization along with a written statement of suitability for licensure as provided in Section 022 of these rules; (1-5-88)()

d. The disclosure of the issuance or denial of registration or licensure by any state or district regulatory body; (4-2-03)

e. Not less than two (2) certificates of recommendation from persons having personal knowledge of the applicant's character; (1-5-88)

f. One (1), three by four inch (3" x 4") or smaller unmounted photograph of the applicant's head and shoulders, taken not more than one (1) year before the application date; (3-29-10)

g. Such other information as deemed necessary for the Board to identify and evaluate the applicant's credentials; and (1-5-88)

h. ~~A copy of the application to write the qualifying exam and the date the examination is scheduled~~ Evidence of successful passage of the written examination or a letter from the examining entity authorizing the applicant to take the examination. (1-5-88)()

02. Licensure by Endorsement. An applicant may be eligible for licensure without examination if he or she meets all of the other qualifications prescribed in Section 54-3709, Idaho Code, and also holds a current valid license or registration from some other state, territory or district of the United States, or certified by the National Board for Certification in Occupational Therapy providing they meet Idaho standards and are equivalent to the requirements for licensure pursuant to these rules. (3-29-10)

a. Each applicant for licensure by endorsement shall submit a completed written application to the Board on forms prescribed by the Board, together with the application fee. The application shall be verified, under oath, and contain the specific information in Subsection 021.01.a. through 021.01.g. of these rules. (3-29-10)

b. Proof of such licensure or registration shall be verified in a manner acceptable to the Board. (1-5-88)

03. Limited Permit. The Board may issue a Limited Permit to a graduate occupational therapist or graduate occupational therapy assistant who meets the requirements set forth by Sections 54-3706(1) and 54-3706(2), Idaho Code, who has not yet passed the examination as required in Paragraph 020.04.a. of these rules. (3-29-10)

a. Each person applying for a limited permit must submit a completed written application to the Board on forms prescribed by the Board, together with the required fee. (3-29-10)

b. A Limited Permit shall only allow a person to practice occupational therapy in association with and under the supervision of a licensed occupational therapist. (1-5-88)

c. A Limited Permit shall be valid six (6) months from the date of issue. (3-20-14)

d. A Limited Permit may be extended by the Board for good cause. (3-20-14)

04. Temporary License. The Board may issue a temporary license to a person applying for licensure as an occupational therapist or an occupational therapy assistant if the person is currently licensed and in good standing to practice in another jurisdiction and meets that jurisdiction's requirements for licensure by endorsement. (3-29-10)

a. Each person applying for temporary licensure must submit a completed written application to the Board on forms prescribed by the Board, together with the required fee. (3-29-10)

b. A temporary license shall automatically expire once the Board has processed the person's application for licensure and issued or denied the applied-for license, or in six (6) months after the date on which the Board issued the temporary license, whichever is sooner. (3-29-10)

05. Personal Interview. The Board may, at its discretion, require the applicant to appear for a personal interview. (1-5-88)

~~**06. Occupational Therapists Practicing in Idaho on Effective Date of These Rules.** All persons practicing occupational therapy in Idaho and holding American Occupational Therapy Certification Board (AOTCB) registration on January 5, 1988, shall qualify for licensure by endorsement. (3-29-10)~~

022. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE.

An applicant who, or whose license, has a criminal charge, conviction, finding of guilt, withheld judgment, or suspended sentence for any crime under any municipal, state, or federal law other than minor traffic offenses, or has been subject to discipline by any state professional regulatory agency or professional organization must submit with the application a written statement and any supplemental information establishing the applicant's current suitability for licensure. ()

01. Consideration of Factors and Evidence. The Board shall consider the following factors or evidence: ()

a. The severity or nature of the crime or discipline; ()

b. The period of time that has passed since the crime or discipline under review; ()

c. The number or pattern of crimes or discipline or other similar incidents; ()

d. The circumstances surrounding the crime or discipline that would help determine the risk of repetition; ()

e. The relationship of the crime or discipline to the practice of occupational therapy; ()

f. The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of current

- rehabilitation; and ()
- g. Any other information regarding rehabilitation or mitigating circumstances. ()
02. Interview. The Board may, at its discretion, grant an interview of the applicant. ()
03. Applicant Bears the Burden. The applicant shall bear the burden of establishing the applicant's current suitability for licensure. ()

023. LICENSE EXPIRATION AND RENEWAL.

01. Expiration Date. An individual's license expires on the individual's birthday. The individual must annually renew the license before the individual's birthday in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-25-16)

02. Reinstatement. A license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Reinstatement of a license from inactive to active status is governed by Section 030. (4-7-11)

03. Application for Renewal. In order to renew a license, a licensee must submit a timely, completed, Board-approved renewal application form and pay the required renewal fees. (3-29-10)

~~023.~~ 024. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

APPENDIX A
OCCUPATIONAL THERAPY CODE OF ETHICS
PREAMBLE

All Occupational Therapists, Occupational Therapy Assistants, ~~Graduate Occupational Therapists, Graduate Occupational Therapy Assistants, and Occupational Therapy Aides~~ and Limited Permit Holders (collectively, "occupational therapy personnel") are responsible for maintaining and promoting the ethical practice of occupational therapy. Occupational therapy personnel shall act in the best interest of the patient/client at every level of practice. This Code of Ethics, modeled in principle and the spirit of the Code of Ethics of the American Occupational Therapy Association, sets forth principals for the ethical practice of occupational therapy for occupational therapy personnel. This Code of Ethics shall be binding on all ~~Occupational Therapists, Occupational Therapy Assistants, Graduate Occupational Therapists, Graduate Occupational Therapist Assistants, and Occupational Therapy Aides~~ occupational therapy personnel.

Principle 1.
Occupational therapy personnel shall demonstrate, a concern for the well-being of the recipients of their services. (beneficence).

Principle 2.
Occupational therapy personnel shall take reasonable precautions to avoid imposing or inflicting harm upon the recipient of services or to his or her property. (nonmaleficence)

Principle 3.
Occupational therapy personnel shall respect the recipient and/or their surrogate(s) as well as the recipient's rights. (autonomy, privacy, confidentiality)

Principle 4.
Occupational therapy personnel shall achieve and continually maintain high standards of competence. (duties)

Principle 5.

Occupational therapy personnel shall comply with laws and policies guiding the profession of occupational therapy.
(justice)

Principle 6.

Occupational therapy personnel shall provide accurate information about occupational therapy services. (veracity)

Principle 7.

Occupational therapy personnel shall treat colleagues and other professionals with fairness, discretion, and integrity.
(fidelity)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.09.01 – RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1604, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

In 2018, the Legislature passed [HB 409](#), which reduces the Nursing Home Administrators-in-Training (AIT) program from twelve (12) months to one-thousand (1,000) hours. The new requirement of 1,000 hours as an Administrator in Training will take approximately 6 months to complete. The rules for endorsement and the AIT program are being amended to implement these changes.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 140-142](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 54-1604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 18, 2018.

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 2018, the Legislature passed HB 409, which reduces the Nursing Home Administrators-in-Training (AIT) program from twelve (12) months to one-thousand (1,000) hours. The new requirements of 1,000 hours as an Administrator in Training will take approximately 6 months to complete. The rules for endorsement and the AIT program are being amended to implement these changes.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

On July 1, 2018 HB 409 becomes effective. This temporary/proposed rule is necessary to implement those changes.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a temporary rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jennifer Carr at (208) 577-2599.

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 July 25, 2018.

DATED this 13th Day of June, 2018.

LINK: LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0901-1801

300. ENDORSEMENT (RULE 300).

Each applicant for licensure by endorsement shall be required to document compliance with each of the following requirements. (4-6-05)

01. A Valid License. Hold a valid and current nursing home administrator license issued in another state. (4-6-05)

02. Experience/Education. (3-30-07)

a. One ~~(1) year~~ thousand (1,000) hours of experience as an administrator in training in another state; ~~(3-30-07)~~ ()

b. A total of one ~~(1) year~~ thousand (1,000) hours of combined experience obtained in an administrator in training program and from practical experience as an administrator in another state; or ~~(3-30-07)~~ ()

c. A master's degree in health administration related to long-term care from an accredited institution; or (3-30-07)

d. A master's degree in health administration from an accredited institution and one (1) year management experience in long-term care. (3-30-07)

03. Criminal History. Has not been found guilty or convicted or received a withheld judgment or suspended sentence for any felony or any crime involving moral turpitude or received discipline for a license offense in any state. (4-6-05)

04. National Examination. Has taken and successfully passed the NAB examination. (4-6-05)

05. State Examination. Has taken and successfully completed the state of Idaho examination. (4-6-05)

06. Affidavit. Has certified under oath to abide by the laws and rules governing the practice of nursing home administration in Idaho. (4-6-05)

301. -- 399. (RESERVED)

400. NURSING HOME ADMINISTRATORS-IN-TRAINING (RULE 400).

01. ~~Related Health Care Field~~ Supervised Hour Requirements. ~~“Related health care field” shall mean a field in health care related to administration~~ An individual must successfully complete one thousand (1,000) hours under the direct supervision of a licensed nursing home administrator in compliance with Section 54-1610, Idaho Code, and these rules in order to be eligible to take the examination. ~~(7-1-93)~~ ()

02. Trainees. ~~T~~ A trainees must work on a full time basis in any capacity in an Idaho licensed nursing home setting. Full time shall be at least a thirty-two (32) hour per week work schedule with consideration for normal leave taken. ~~Failure to comply with this rule or Section 54-1610, Idaho Code, shall not receive credit as a Nursing Home Administrator In Training.~~ (4-7-11) ()

a. Each trainee shall register with the Board as a Nursing Home Administrator-In-Training (AIT) by submitting an application provided by the Board together with the required fee. The effective date of each AIT program shall be the date the Board approves the application. (3-13-02)

b. ~~Quarterly~~ Reports for those trainees employed in a nursing home must be submitted to the Board after completion of each five hundred (500) hour increment and reflect that the preceptor of the trainee has instructed, assisted and given assignments as deemed necessary to fulfill the requirements of Subsection 400.03. ~~(7-1-98)~~ ()

03. Nursing Home Administrator-in-Training Requirements. A Nursing Home Administrator-in-Training shall be required to train in all domains of nursing home administration including the following: (4-7-11)

a. Resident Care Management. (7-1-98)

b. Personnel Management. (7-1-93)

c. Financial Management. (7-1-93)

d. Environmental Management. (7-1-98)

e. Meeting Regulations and Governing Entities Directives. (7-1-98)

f. Organizational Management. (7-1-98)

g. Completion of a specialized course of study in nursing home long-term health care administration approved by NAB or otherwise approved by the Board. (4-6-05)

04. Facility Administrator. The trainee must spend no less than thirty-two (32) hours a month with the preceptor in a training and/or observational situation in the six (6) domains of nursing home administration as outlined in Subsection 400.03. Time spent with the preceptor must be in addition to the full time work that the trainee must perform under Subsection 400.02, unless the Administrator-in-Training role is designated as a full time training position. Collectively, ~~over the twelve (12) month~~ during the training period, ~~quarterly~~ reports must reflect particular emphasis on all six (6) domains of nursing home administration during the time spent in the nursing home. ~~(4-7-11)~~ ()

05. Preceptor Certification. (7-1-93)

a. A nursing home administrator who serves as a preceptor for a nursing home administrator-in-training must be certified by the Board of Examiners of Nursing Home Administrators. The Board will certify the Idaho licensed nursing home administrator to be a preceptor who: (7-1-98)

i. Is currently practicing as a nursing home administrator and who has practiced a minimum of two (2) consecutive years as a nursing home administrator; and (7-1-98)

ii. Who successfully completes a six (6) clock hour preceptor orientation course approved by the Board. (7-1-93)

b. The orientation course will cover the philosophy, requirements and practical application of the nursing home administrator-in-training program and a review of the six (6) phases of nursing home administration as outlined in Subsection 400.03. (7-1-93)

c. The preceptor must be re-certified by the Board every ten (10) years. (4-7-11)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.09.01 – RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-1802

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1604, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule will allow the Board of Examiners of Nursing Home Administrators to review applications received less than seven (7) days prior to a board meeting and provide clear notice of the denial of an application for lack of activity. The pending rule will improve continuing education options by adding a carryover option and hardship waiver. In addition, the rule will clarify a temporary permit's expiration and remove outdated language.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 296-298](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-1604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

This proposed rule will allow the Board of Examiners of Nursing Home Administrators to review applications received less than seven (7) days prior to a board meeting and provide clear notice of the denial of an application for lack of activity. The proposed rule will improve continuing education options by adding a carryover option and hardship waiver. In addition, the rule will clarify a temporary permit's expiration and remove outdated language.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0901-1802

050. APPLICATIONS (RULE 050).

Applications will be on forms approved by the Board. (4-6-05)

01. Board Consideration. No application will be considered for any action unless accompanied by the appropriate fees and until the required supporting documentation is received by the Bureau. (4-6-05)

02. Filing Deadline. ~~To be considered by the Board, properly completed applications must be received by the Bureau at least thirty (30) days prior to the first day of the month in which the Board will meet~~ Applications received less than seven (7) days prior to a Board meeting may be held over to the next meeting. (4-6-05)()

03. Lack of Activity. Applications on file with the Board that lack activity for any period of twelve (12) months shall be deemed denied and terminated upon thirty (30) days written notice unless good cause is demonstrated to the Board. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

200. CONTINUING EDUCATIONAL ~~AL AND TRAINING~~ REQUIREMENTS (RULE 200).

01. Educational Requirements. In order to ~~be credited toward the educational requirements of the Act~~ qualify as continuing education, a seminar or course of study must be relevant to nursing home administration as determined by the Board and sponsored by accredited universities or colleges, State or National health related associations, and/or approved by NCERS (National Continuing Education Review Service). (7-1-93)()

~~**02. Requirements for License Renewal.** The department shall refuse to renew a Nursing Home Administrators license unless the required fee is accompanied by evidence of having met the educational and training requirement set forth in these rules on the form provided for that purpose by the Bureau of Occupational Licenses.~~ (7-1-98)

~~**03.2. Renewal of License.** Applicants for renewal of license shall be required to attend complete a minimum of twenty (20) clock hours of courses approved under Subsection 200.01 within the preceding twelve-month (12) period. Licensees shall not be required to comply with this requirement during the first year in which they become licensed under this chapter.~~ (4-2-08)()

~~**04.3. Credit Received Toward Renewal of License Waiver.** Credit received toward renewal of license may not be used again toward renewal of license for another license year~~ The Board may waive the requirements of this rule for reasons of individual hardship including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. (7-1-98)()

~~**04. Carryover of Continuing Education Hours.** Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of twenty (20) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one (1) renewal year.~~()

(BREAK IN CONTINUITY OF SECTIONS)

500. PERMITS (RULE 500).

01. Requirements for Issuance. A temporary permit may be issued ~~for one (1) year upon application upon submission of an endorsement application evidencing a license in good standing in another state~~ and payment of fees. ~~The permit shall be valid until the Board acts upon their endorsement application.~~ No more than one (1) temporary permit may be granted to any applicant for any reason. (7-1-98)()

02. Issuance of a Temporary Permit Does Not Obligate the Board. Issuance of a temporary permit does not obligate the board to subsequently issue a license. Issuance of a subsequent license depends upon a successful application to the Board. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

~~700. RULEMAKING HISTORY PRIOR TO JULY, 1993 (RULE 700).~~

~~Adoption date December 7, 1978~~

~~Effective date January 1, 1979~~

~~Adoption date December 24, 1985~~

~~Effective date January 13, 1986~~

~~Effective date January 18, 1990~~

~~Adoption date March 26, 1993~~

~~Effective date April 15, 1993~~

(7-1-93)

~~701. -- 999. (RESERVED)~~

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.11.01 – RULES OF THE STATE BOARD OF PODIATRY

DOCKET NO. 24-1101-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-605 and 54-607, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule removes outdated language regarding continuing education (CE) requirements and rulemaking history. The pending rule also removes the limit of CE that can be obtained online. Finally, the pending rule expands CE options to include a variety of formats, such as lectures, conferences, seminars, moderator-guided panel discussions, clinical and practical workshops, internet based learning and home study.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 299-301](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 8th day of November, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

This proposed rule removes outdated language regarding continuing education (CE) requirements and rulemaking history. The proposed rule also removes the limit of CE that can be obtained online. Finally, the proposed rule expands CE options to include a variety of formats, such as lectures, conferences, seminars, moderator-guided panel discussions, clinical and practical workshops, internet based learning and home study.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 29th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1101-1801

401. LICENSURE BY ENDORSEMENT (RULE 401).

Under Section 54-613, Idaho Code, applicants for licensure by endorsement may be granted a license upon the approval of the Board. Each applicant for licensure by endorsement must provide documentation for each of the following before licensure will be considered: (3-15-02)

- 01. Complete Application.** A complete application together with the required fee. (4-11-06)
- 02. Certification of License.** Certification of having maintained a current license or other authority to practice issued by a regulatory board of Podiatry in any state or territory. (4-11-06)
- 03. Credentials.** Credentials as required in Subsections 200.02 through 200.05. (3-29-10)
- 04. Examination.** Successful passage of a written licensure examination covering all those subjects noted in Section 54-606, Idaho Code. Official certification of examination must be received by the board directly from: (4-11-06)
 - a.** The applicant's state or territory of licensure; or (3-15-02)
 - b.** The national board of podiatric medical examiners. (3-20-14)
- 05. Residency.** Proof of completion of the residency requirement as set forth in Subsection 200.06 of this rule. However, if the applicant graduated from a college of podiatry prior to 1993, this requirement will be waived. (3-29-10)
- 06. Practical Experience.** Having practiced podiatry under licensure for three (3) of the last five (5) years immediately prior to the date of application. (4-11-06)
- 07. Continuing Education.** Having ~~obtained at least twelve (12) hours of continuing education during the twelve (12) months prior to the date of application. Effective January 1, 2015, having obtained~~ **completed** at least fifteen (15) hours of continuing education germane to the practice of podiatry during the twelve (12) months prior to the date of application. ~~(3-20-14)()~~
- 08. Disciplinary Action.** Has not been the subject of any disciplinary action including pending or unresolved licensure actions within the last five (5) years immediately prior to application and has never had a license to practice podiatry revoked or suspended either voluntarily or involuntarily in any jurisdiction. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

700. CONTINUING EDUCATION (RULE 700).

01. ~~Post-Graduate~~ Education Requirement for License Renewal. ~~Each podiatrist licensed by the state of Idaho shall attend in each twelve (12) month period preceding the renewal of a license to practice podiatry in Idaho, a minimum of twelve (12) full hours of post-graduate podiatry education courses. Effective January 1, 2015, each~~ **Each** podiatrist licensed by the state of Idaho shall **attend complete** in each twelve-month period preceding the renewal of a license to practice podiatry in Idaho, a minimum of fifteen (15) full hours of ~~post-graduate~~ podiatry **continuing** education ~~courses. No more than ten (10) hours of continuing education may be obtained on-line~~ **Continuing education includes lectures, conferences, seminars, moderator-guided panel discussions, clinical and practical workshops, internet based learning and home study. Courses Education** must be germane to the practice of

podiatry; and

~~(3-20-14)~~()

- a. Approved by the Council on Podiatric Medical Education; or (4-2-08)
- b. Otherwise approved by the Board. (4-2-08)

02. Submission of License Renewal Application Form. Each licensed Idaho podiatrist will be furnished a license renewal application form by the Bureau of Occupational Licenses on which each podiatrist shall be required to certify by signed affidavit that compliance with the continuing education requirements has been met and shall submit the renewal application together with the required fees to the Bureau. (3-15-02)

03. Verification of Attendance Completion. It shall be necessary for each licensee to maintain verification of attendance completion by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended completed by the licensee. This verification shall be maintained by the licensee and provided to the Board upon the request of the Board or its agent. The Board will conduct random audits to monitor compliance. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action. ~~(3-20-14)~~()

04. Carryover of Continuing Education Hours. Continuing education courses not claimed for credit in the current renewal year may be credited for the next renewal year. A maximum of fifteen (15) hours may be carried forward from the immediately preceding year. ~~(3-20-14)~~()

05. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or for other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (3-20-14)

~~701. -- 799. (RESERVED)~~

~~**800. RULEMAKING HISTORY PRIOR TO JULY 1, 1993 (RULE 800).**
All previous rules of this board are hereby repealed and these Rules approved by the board on January 25, 1978, shall become effective on this date. Amended and readopted effective October 15, 1987. Amended and readopted effective May 29, 1991. Amended and readopted effective August 1, 1997.~~ (7-1-98)

~~§701. -- 999. (RESERVED)~~

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.13.01 – RULES GOVERNING THE PHYSICAL THERAPY LICENSURE BOARD

DOCKET NO. 24-1301-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-2206 and 54-2225, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

In 2018, the Legislature passed and the Governor signed into law [House Bill 505](#). This legislation added dry needling to the Physical Therapy Practice Act, allowing licensed physical therapists in Idaho to perform dry needling after completion of certain education and training. The Physical Therapy Licensure Board is proposing rules to implement the practice of dry needling, including establishing education and training requirements, as well as informed consent requirements.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 317-322](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 16th day of November, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 54-2206 and 54-2225, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

In 2018, the Legislature passed and the Governor signed into law House Bill 505. This legislation added dry needling to the Physical Therapy Practice Act, allowing licensed physical therapists in Idaho to perform dry needling after completion of certain education and training. The Physical Therapy Licensure Board is proposing rules to implement the practice of dry needling, including establishing education and training requirements, as well as informed consent requirements.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board and in stakeholder meetings with interested parties.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1301-1801

010. DEFINITIONS (RULE 10).

- 01. Board.** The Physical Therapy Licensure Board. (3-19-07)
- 02. Bureau.** Bureau means the Idaho Bureau of Occupational Licenses as created in section 67-2602, Idaho Code. (3-19-07)
- 03. Physical Therapist.** An individual who meets all the requirements of Title 54, Chapter 22, Idaho Code, holds an active license and who engages in the practice of physical therapy. (3-19-07)
- 04. Physical Therapist Assistant.** An individual who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. (3-19-07)
- 05. Supportive Personnel.** An individual, or individuals, who are neither a physical therapist or a physical therapist assistant, but who are employed by and/or trained under the direction of a licensed physical therapist to perform designated non-treatment patient related tasks and routine physical therapy tasks. (3-19-07)
- 06. Non-Treatment Patient Related Tasks.** Actions and procedures related to patient care that do not involve direct patient treatment or direct personal supervision, but do require a level of supervision not less than general supervision, including, but not limited to: treatment area preparation and clean-up, equipment set-up, heat and cold pack preparation, preparation of a patient for treatment by a physical therapist or physical therapist assistant, transportation of patients to and from treatment, and assistance to a physical therapist or physical therapist assistant when such assistance is requested by a physical therapist or physical therapist assistant when safety and effective treatment would so require. (3-19-07)
- 07. Routine Physical Therapy Tasks.** Actions and procedures within the scope of practice of physical therapy, which do not require the special skills or training of a physical therapist or physical therapist assistant, rendered directly to a patient by supportive personnel at the request of and under the direct personal supervision of a physical therapist or physical therapist assistant. (3-19-07)
- 08. Testing.** (3-19-07)
- a.** Standard methods and techniques used in the practice of physical therapy to gather data about individuals including: (3-19-07)
- i. Electrodiagnostic and electrophysiological measurements; (3-19-07)
 - ii. Assessment or evaluation of muscle strength, force, endurance and tone; (3-19-07)
 - iii. Reflexes; (3-19-07)
 - iv. Automatic reactions; (3-19-07)
 - v. Posture and body mechanics; (3-19-07)
 - vi. Movement skill and accuracy; (3-19-07)
 - vii. Joint range of motion and stability; (3-19-07)
 - viii. Sensation; (3-19-07)

- ix. Perception; (3-19-07)
 - x. Peripheral nerve function integrity; (3-19-07)
 - xi. Locomotor skills; (3-19-07)
 - xii. Fit, function and comfort of prosthetic, orthotic, and other assistive devices; (3-19-07)
 - xiii. Limb volume, symmetry, length and circumference; (3-19-07)
 - xiv. Clinical evaluation of cardiac and respiratory status to include adequacy of pulses, noninvasive assessment of peripheral circulation, thoracic excursion, vital capacity, and breathing patterns; (3-19-07)
 - xv. Vital signs such as pulse, respiratory rate, and blood pressure; (3-19-07)
 - xvi. Activities of daily living; and the physical environment of the home and work place; and (3-19-07)
 - xvii. Pain patterns, localization and modifying factors; and (3-19-07)
 - xviii. Photosensitivity. (3-19-07)
- b.** Specifically excluded are the ordering of electromyographic study, electrocardiography, thermography, invasive vascular study, selective injection tests, or complex cardiac or respiratory function studies without consultation and direction of a physician. (3-19-07)
- 09. Functional Mobility Training.** Includes gait training, locomotion training, and posture training. (3-19-07)
- 10. Manual Therapy.** Skilled hand movements to mobilize or manipulate soft tissues and joints for the purpose of: (3-19-07)
- a.** Modulating pain, increasing range of motion, reducing or eliminating soft tissue swelling, inflammation or restriction; (3-19-07)
 - b.** Inducing relaxation; (3-19-07)
 - c.** Improving contractile and non-contractile tissue extensibility; and (3-19-07)
 - d.** Improving pulmonary function. (3-19-07)
- 11. Dry Needling.** A skilled intervention performed by a physical therapist that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular, and connective tissues for the evaluation and management of neuromusculoskeletal conditions, pain and movement impairments. ()
- 12. Physical Agents or Modalities.** Thermal, acoustic, radiant, mechanical, or electrical energy used to produce physiologic changes in tissues. (3-19-07)
- 13. General Supervision.** A physical therapist's availability at least by means of telecommunications, which does not require a physical therapist to be on the premises where physical therapy is being provided, for the direction of a physical therapist assistant. (3-19-07)
- 14. Direct Supervision.** A physical therapist's or physical therapist assistant's physical presence and availability to render direction in person and on the premises where physical therapy is being provided. (3-19-07)
- 15. Direct Personal Supervision.** A physical therapist's or physical therapist assistant's direct and continuous physical presence and availability to render direction, in person and on the premises where physical

therapy is being provided. The physical therapist or physical therapist assistant must have direct contact with the patient during each session and assess patient response to delegated treatment. (3-19-07)

156. Supervising Physical Therapist. A licensed physical therapist who developed and recorded the initial plan of care and/or who has maintained regular treatment sessions with a patient. Such physical therapist's designation of another licensed physical therapist if the physical therapist who developed and recorded the initial plan of care or maintained regular treatment sessions is not available to provide direction at least by means of telecommunications. (3-19-07)

167. Nationally Accredited School. A school or course of physical therapy or physical therapist assistant with a curriculum approved by: (3-19-07)

a. The American Physical Therapy Association (APTA) from 1926 to 1936; or the APTA Accreditation Commission; or (3-19-07)

b. The Council on Medical Education and Hospitals of the American Medical Association from 1936 to 1960; or (3-19-07)

c. An accrediting agency recognized by the U.S. Department of Education, the Council on Postsecondary Accreditation, or a successor entity, or both. (4-7-11)

178. Examination. The examination shall be the National Physical Therapy Examination (NPTE) administered by Federation of State Boards of Physical Therapy. The examination may also include a jurisprudence examination adopted by the Board. (4-2-08)

011. -- 015. (RESERVED)

016. SUPERVISION (RULE 16).

A physical therapist shall supervise and be responsible for patient care given by physical therapist assistants, supportive personnel, physical therapy students, and physical therapist assistant students. (3-19-07)

01. Procedures and Interventions Performed Exclusively by Physical Therapist. The following procedures and interventions shall be performed exclusively by a physical therapist: (3-19-07)

a. Interpretation of a referral for physical therapy if a referral has been received. (3-19-07)

b. Performance of the initial patient evaluation and problem identification including a diagnosis for physical therapy and a prognosis for physical therapy. (3-19-07)

c. Development or modification of a treatment plan of care which is based on the initial evaluation and which includes long-term and short-term physical therapy treatment goals. (3-19-07)

d. Assessment of the competence of physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel to perform assigned procedures, interventions and routine tasks. (3-19-07)

e. Selection and delegation of appropriate portions of treatment procedures, interventions and routine physical therapy tasks to the physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel. (3-19-07)

f. Performance of a re-evaluation when any change in a patient's condition occurs that is not consistent with the physical therapy treatment plan of care, patient's anticipated progress, and physical therapy treatment goals. (3-19-07)

g. Performance and documentation of a discharge evaluation and summary of the physical therapy treatment plan. (3-19-07)

h. **Performance of dry needling.** **()**

02. Supervision of Physical Therapist Assistants. A physical therapist assistant shall be supervised by a physical therapist by no less standard than general supervision. (3-19-07)

a. A physical therapist assistant shall not change a procedure or intervention unless such change of procedure or intervention has been included within the treatment plan of care as set forth by a physical therapist. (3-19-07)

b. A physical therapist assistant may not continue to provide treatment as specified under a treatment plan of care if a patient's condition changes such that further treatment necessitates a change in the established treatment plan of care unless the physical therapist assistant has consulted with the supervising physical therapist prior to the patient's next appointment for physical therapy, and a re-evaluation is completed by the supervising physical therapist. (3-19-07)

c. The supervising physical therapist shall provide direct personal contact with the patient and assess the plan of care on or before every ten (10) visits or once a week if treatment is performed more than once per day but no less often than once every sixty (60) days. The supervising therapist's assessment shall be documented in the patient record. (3-20-14)

d. A physical therapist assistant may refuse to perform any procedure, intervention, or task delegated by a physical therapist when such procedure, intervention, or task is beyond the physical therapist assistant's skill level or scope of practice standards. (3-19-07)

e. A physical therapist shall not be required to co-sign any treatment related documents prepared by a physical therapist assistant, unless required to do so in accordance with law, or by a third-party. (3-19-07)

03. Supervision of Supportive Personnel. Any routine physical therapy tasks performed by supportive personnel shall require direct personal supervision. (3-19-07)

04. Supervision of Physical Therapy and Physical Therapist Assistant Students. Supervision of physical therapy students and physical therapist assistant students shall require direct supervision. (3-19-07)

a. A physical therapy student shall only be supervised by the direct supervision of a physical therapist. (3-19-07)

b. A physical therapy student shall be required to sign all treatment notes with the designation "SPT" after their name, and all such signatures shall require the co-signature of the supervising physical therapist. (3-19-07)

c. A physical therapist assistant student shall be required to sign all treatment notes with the designation "SPTA" after their name, and all such signatures shall require the co-signature of the supervising physical therapist or supervising physical therapist assistant. (3-19-07)

05. Supervision Ratios. (3-19-07)

a. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistants providing such treatment be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

b. At no time during the treatment of a patient or patients for physical therapy shall the number of supportive personnel performing routine physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

c. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapy students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site.

(3-19-07)

d. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistant students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

e. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistants, physical therapy students, physical therapist assistants students, and supportive personnel, or a combination thereof, performing delegated supervised physical therapy or routine physical therapy tasks be more than three (3) times in number of such physical therapist(s) providing physical therapy treatment at any physical therapy practice or site; nor shall the number of physical therapist assistant students or supportive personnel, or a combination thereof, performing delegated and supervised physical therapy tasks or routine physical therapy tasks be more than twice in number of such physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

176. -- 179. (RESERVED)

180. REQUIREMENTS TO PRACTICE DRY NEEDLING (RULE 180).

A physical therapist, with at least one (1) year of practice as a licensed physical therapist, may perform dry needling upon successful completion of education and training in dry needling that meets the following requirements: ()

01. Length of Course. The education and training consists of a minimum of twenty-seven (27) hours of in-person instruction of which no less than sixteen (16) hours must be hands-on application of dry needling techniques by the physical therapist; ()

02. Safety Training. The education and training includes instruction and training on indications/contraindications for dry needling, safe needling technique, and blood borne pathogens; ()

03. Course Approval. Each course is approved by the Federation of State Boards of Physical Therapy (FSBPT) or another nationally recognized accrediting body of physical therapy that is approved by the Board; and ()

04. Proficiency Assessment. Each course requires successful completion of an assessment of proficiency in dry needling, which includes a practical demonstration of the physical therapist's dry needling skills. ()

05. Course Completion. Completion of this education and training may have occurred prior to the effective date of these rules. ()

181. PRACTICE OF DRY NEEDLING (RULE 181).

A physical therapist who practices dry needling must maintain documentation of having satisfied the requirements of Section 180 of these rules and must obtain and maintain documentation of written informed consent from patients. ()

01. Documentation of Training. Upon request by the Board, a physical therapist must produce documentation of having satisfied the education and training requirements in Section 180 of these rules. ()

02. Written Informed Consent. Prior to performing dry needling on a patient, the physical therapist must provide the patient with information that includes a definition and description of the practice of dry needling and a description of the risks, benefits, and potential side effects of dry needling and obtain the patient's written consent to treatment, which documentation must be maintained as part of the patient record. ()

182. -- 199. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.14.01 – RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-3204 and 54-3208, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule will allow applicants to provide documentation and verification of their credentials through the repository of credentialing information maintained by the Association of Social Work Boards (ASWB). The Board is also adding a provision to allow the Board to waive the examination requirement for out-of-state applicants who are licensed and actively practiced in another state but were not required to pass an examination at the time they were initially licensed. These changes will eliminate barriers to licensure and increase portability for those coming to Idaho. It also removes an obsolete section from the rule.

The Board has been notified that the ASWB may change the name of the “Social Work Registry.” Therefore, the changes to the pending rule will substitute a description of the Social Work Registry in place of the specific name to eliminate any confusion in the event the name changes in the future.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, **Vol. 18-10, pages 323-325**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 54-3204 and 54-3208, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

This proposed rule will allow the Board of Social Work Examiners to recognize the Social Work Registry administered by Association of Social Work Boards (ASWB) as a reliable source of credentialing information. The Board is also adding a provision to waive the examination requirement for those applicants for licensure by endorsement who have actively practiced in another state but were not required to pass an examination at the time they obtained a social work license. These changes will eliminate barriers to licensure and increase portability for those coming to Idaho. It also removes an obsolete section from the rule.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-1801

075. CREDENTIALS TO BE FILED BY ALL APPLICANTS (RULE 075).

01. Completed Application. An application shall be completed by all applicants for licensure upon a form prescribed by the State Board of Social Work Examiners. (3-30-07)

02. Official Documents. All applicants shall arrange for official documents including transcripts to be transmitted by the registrars of the educational institutions or official custodian of documents or from the repository of primary source credentialing information administered by the Association of Social Work Boards (ASWB), directly to the board. ~~(3-30-07)~~ ()

03. Applications on File. Applications on file with the Board for a period in excess of two (2) years from the date of receipt by the Bureau shall be terminated unless good cause is demonstrated to the Board. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

200. LICENSING QUALIFICATIONS AND DEFINITION OF TERMS (RULE 200).

All applicants for licensing under the Social Work Licensing Act must meet the minimum qualifications as set forth by this act. (7-1-93)

01. Good Moral Character. “Good moral character” is defined by the board as that behavior exhibited on the part of an applicant which is in conformity with the Social Work Code of Professional Conduct and within the limits of state law. (5-3-03)

02. Application for Licensure. Application for licensure must be made to the Board of Social Work Examiners on forms provided by the Bureau of Occupational Licenses. (7-1-93)

03. Educational Requirements. Educational requirements must be verified by submission of official transcripts sent directly to the Board from the educational institution directly to the Bureau of Occupational Licenses or from the repository of primary source credentialing information administered by the Association of Social Work Boards (ASWB). ~~(5-3-03)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

350. EXAMINATIONS, ENDORSEMENT, AND BOARD MEETINGS (RULE 350).

Applications for examination may be reviewed and approved by a designated Board member upon determination that the applicant meets the qualifications for examination. Approval to sit for examination does not obligate the Board to issue a license if it is later determined that the applicant does not meet the requirements for licensure. (4-4-13)

01. Board Meetings. Board meetings will be held at least three (3) times each year at such times and places as the board deems necessary. (5-3-03)

02. Exam. The Board approves the uniform, nationally standardized examination of the Association of Social Work Boards (ASWB) as the Idaho licensure examination. (4-4-13)

a. Bachelor level candidates shall be required to successfully pass the bachelor’s examination.

(4-2-08)

b. Masters level candidates shall be required to successfully pass the master's examination. (4-2-08)

c. Clinical level candidates shall be required to successfully pass the clinical examination. (5-3-03)

03. Dates of Exams. Examination at all levels of social work licensing will be conducted on dates established for national administration. (7-1-93)

04. Graduation Date to Qualify for Exam. Candidates for examination who can satisfy the board that they will be graduating at the end of the spring, summer or fall terms of any given year, may qualify for examination immediately preceding the date of graduation. (4-4-13)

05. Endorsement. The Board may grant a license to any person who submits a completed application on a form approved by the Board together with the required fees and who: (5-3-03)

a. Holds a current, active social work license, at the level for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the Board from the issuing agency; and (3-20-04)

b. Has not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (5-3-03)

c. Is of good moral character and has not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (5-3-03)

d. Has successfully passed an examination, as referenced in Subsection 350.02, or an examination provided by the Professional Examination Service (PES) at the clinical social worker and social worker level or the Education Testing Service (ETS) examination; and (5-3-03)

e. Has certified under oath to abide by the laws and rules governing the practice of social work in Idaho and the code of professional conduct. (5-3-03)

f. The Board may waive the examination requirement in Subsection 350.05.d. for an applicant who was not required to pass such an examination at the time the applicant initially obtained a social work license, provided that the applicant meets all other requirements in this subsection and has actively practiced social work for five (5) of the last seven (7) years preceding application. ()

(BREAK IN CONTINUITY OF SECTIONS)

~~500. RULEMAKING HISTORY PRIOR TO JULY, 1993 (RULE 500).~~

~~Adopted January 30, 1980~~

~~Re-adopted October 11, 1983~~

~~Revised December 15, 1983~~

~~Rule C.1. and E.1.c. Adopted Emergency~~

~~Re-adopted February 23, 1985~~

~~Re-adopted November 25, 1985~~

~~Re-adopted February 16, 1988~~

~~Re-adopted January 22, 1990~~

(7-1-93)

500. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.15.01 – RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-3404, 54-3405B, and 54-3405C, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

On July 1, 2018 **House Bill 350** became effective, and this pending rule is necessary to implement the new law. House Bill 350 amended the qualifications for licensure of Marriage and Family Therapists and Associate Marriage and Family Therapists to allow the Board to establish education requirements in rule. These rules reduce the costs and barriers to licensure by creating additional pathways to obtain an Associate Marriage and Family Therapist license. It also allows an individual to work under supervision while completing requirements for a Marriage and Family Therapist license. These rules accept the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) graduate programs as meeting all education requirements, which eliminates the need for many current applicants to take additional coursework and improves portability from other states. Finally, these rules increase flexibility to complete both practicum and supervised experience hours, which reduces tuition and supervision costs for applicants.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 1, 2018, Idaho Administrative Bulletin, **Vol. 18-8, pages 110-116**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 54-3404(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2018.

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:

On July 1, 2018 House Bill 350 became effective, and this temporary/proposed rule is necessary to implement the new law. House Bill 350 amended the qualifications for licensure of Marriage and Family Therapists and Associate Marriage and Family Therapists to allow the Board to establish education requirements in rule. These rules reduce the costs and barriers to licensure by creating additional pathways to obtain an Associate Marriage and Family Therapist license. It also allows an individual to work under supervision while completing requirements for a Marriage and Family Therapist license. These rules accept the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) graduate programs as meeting all education requirements, which eliminates the need for many current applicants to take additional coursework and improves portability from other states. Finally, these rules increase flexibility to complete both practicum and supervised experience hours, which reduces tuition and supervision costs for applicants.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

On July 1, 2018 House Bill 350 became effective. This temporary/proposed rule is necessary to implement the new law.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a temporary rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jennifer Carr at (208) 334-3233.

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 August 22, 2018.

DATED this 6th Day of July, 2018.

LINK: LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1501-1801

010. DEFINITIONS (RULE 10).

01. Board. The Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists as prescribed in Section 54-3401, Idaho Code. (3-13-02)

02. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-3404 and 67-2602, Idaho Code. (3-13-02)

~~**03. Registered Intern.** A registered intern shall be defined as a person who is obtaining required supervised experience for licensure in a course of study provided by an institution of higher education or a person who is in a private practice setting acting under direct supervision. (3-29-12)~~

04. Accredited University or College. An accredited university or college shall be a college or university accredited by ~~one (1) of the following:~~ a regional accrediting agency as identified by the U.S. Department of Education. (3-29-12)()

~~**a.** The Middle States Association of Colleges and Schools; (3-29-12)~~

~~**b.** The New England Association of Schools and Colleges; (3-29-12)~~

~~**c.** The North Central Association of Colleges and Schools or the Higher Learning Commission; (3-29-12)~~

~~**d.** The Northwest Association of Schools and of Colleges and Universities; (3-29-12)~~

~~**e.** The Southern Association of Colleges and Schools; or (3-29-12)~~

~~**f.** The Western Association of Schools and Colleges. (3-29-12)~~

04. Practicum. The term practicum includes a practicum, internship, or a combination, taken as part of the graduate level program. ()

05. Supplemental Practicum Hours. Supplemental practicum hours are hours of direct client contact that are supervised by a registered marriage and family therapist supervisor at a ratio of one (1) hour of supervision for every ten (10) hours of direct client contact. ()

(BREAK IN CONTINUITY OF SECTIONS)

230. QUALIFICATIONS FOR ASSOCIATE MARRIAGE AND FAMILY THERAPIST (RULE 230).
The following requirements must be met for associate marriage and family therapist licensure: (4-9-09)

01. Graduate Degree. Possess a graduate degree as outlined in ~~Subsection 54-3405B(1), Idaho Code.~~ 238.01 of these rules or a master's degree or higher in marriage and family therapy or a related field from an accredited university or college, provided that the graduate program meets one of the following: ~~(4-9-09)~~()

a. Accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE); or ()

b. Accredited by the Council for Accreditation of Counseling and Related Educational Programs-Marriage, Couple, and Family Counseling (CACREP-MCFC); or ()

c. The program includes, at a minimum, twenty-seven (27) semester credits or thirty-six (36) quarter credits of the graduate level coursework set forth in Subsection 238.01.b of these rules. ()

02. Practicum. ~~Must meet the requirements as outlined in Section 54-3405B(2), Idaho Code.~~ Completion of a supervised practicum in no less than a twelve (12) month period as part of the graduate program. The practicum must consist of at least three hundred (300) hours of direct client contact, of which at least one hundred fifty (150) hours must be with couples, families and other systems, provided that the Board may grant a license to an applicant who completed a practicum with fewer than the required hours and completed one (1) supplemental practicum hour for every hour in which the practicum was deficient. Supplemental practicum hours must be completed as: ~~(4-9-09)~~()

a. A Registered Intern under Section 245 of these rules; or ()

b. Supervised practice in another jurisdiction that is sufficient to be considered substantially similar to the supplemental practicum hour requirements of these rules; or ()

c. A combination of Paragraph 02.a and 02.b of this subsection. ()

03. Examination. Successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or another recognized competency examination in marriage and family therapy that is approved by the Board. ~~(4-9-09)~~()

231. (RESERVED)

232. ASSOCIATE MARRIAGE AND FAMILY THERAPIST PRACTICE (RULE 232).

A licensed associate marriage and family therapist shall only practice under supervision in compliance with the requirements and limitation of Subsection 238.034 of these rules. ~~(4-9-09)~~()

233. -- 237. (RESERVED)

238. MARRIAGE AND FAMILY THERAPISTS (RULE 238).

The following requirements must be met for marriage and family therapist licensure: (3-13-02)

01. Graduate Degree. Possess a ~~graduate master's~~ degree ~~as outlined in Section 54-3405C(1), Idaho Code.~~ or higher in marriage and family therapy or a related field from an accredited university or college provided that the program is either: ~~(3-13-02)~~()

a. Accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE); or ()

b. A program of at least sixty (60) semester hours or ninety (90) quarter hours in length and that includes at a minimum: ()

i. Marriage and family studies – Nine (9) semester credit hours or twelve (12) quarter credit hours: includes theoretical foundations, history, philosophy, etiology and contemporary conceptual directions of marriage and family therapy or marriage and family counseling; family systems theories and other relevant theories and their application in working with a wide variety of family structures, including families in transition, nontraditional

families and blended families, and a diverse range of presenting issues; and preventive approaches, including premarital counseling, parent skill training and relationship enhancement, for working with couples, families, individuals, subsystems and other systems; ()

ii. Marriage and family therapy – Nine (9) semester credit hours or twelve (12) quarter credit hours; includes the practice of marriage and family therapy related to theory, and a comprehensive survey and substantive understanding of the major models of marriage and family therapy or marriage and family counseling; and interviewing and assessment skills for working with couples, families, individuals, subsystems and other systems, and skills in the appropriate implementation of systematic interventions across a variety of presenting clinical issues including, but not limited to, socioeconomic disadvantage, abuse and addiction; ()

iii. Biopsychosocial health and development across the lifespan – Nine (9) semester credit hours or twelve (12) quarter credit hours; includes individual development and transitions across the life span; family, marital and couple life cycle development and family relationships, family of origin and intergenerational influences, cultural influences, ethnicity, race, socioeconomic status, religious beliefs, gender, sexual orientation, social and equity issues and disability; human sexual development, function and dysfunction, impacts on individuals, couples and families, and strategies for intervention and resolution; and issues of violence, abuse and substance use in a relational context, and strategies for intervention and resolution; ()

iv. Psychological and mental health competency – Six (6) semester credit hours or eight (8) quarter credit hours; includes psychopathology, including etiology, assessment, evaluation and treatment of mental disorders, use of the current diagnostic and statistical manual of mental disorders, differential diagnosis and multiaxial diagnosis; standard mental health diagnostic assessment methods and instruments, including standardized tests; and psychotropic medications and the role of referral to and cooperation with other mental health practitioners in treatment planning, and case management skills for working with individuals, couples, families, and other systems and relational groups; ()

v. Professional ethics and identity – Three (3) semester credit hours or four (4) quarter credit hours; includes professional identity, including professional socialization, professional organizations, training standards, credentialing bodies, licensure, certification, practice settings and collaboration with other disciplines; ethical and legal issues related to the practice of marriage and family therapy, legal responsibilities of marriage and family therapy and marriage and family counseling practice and research, business aspects, reimbursement, recordkeeping, family law, confidentiality issues and the relevant codes of ethics, including the code of ethics specified by the board; and the interface between therapist responsibility and the professional, social and political context of treatment; ()

vi. Research – Three (3) semester credit hours or four (4) quarter credit hours; includes research in marriage and family therapy or marriage and family counseling and its application to working with couples and families; and research methodology, quantitative and qualitative methods, statistics, data analysis, ethics and legal considerations of conducting research, and evaluation of research. ()

02. Foreign Educated Applicants. Applicants with a graduate degree from a foreign country may be required to submit a certification from a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or approved by the Board. The service must certify that the graduate degree is equivalent to a graduate degree from the United States. All costs for the certification are the responsibility of the applicant. All information submitted to the Board must be submitted with an English translation. ()

023. Practicum. Must meet the requirements as outlined in Section 54-3405C(2), Idaho Code. Completion of a supervised practicum, including any supplemental practicum hours, which meets the requirements of Subsection 230.02 of these rules. (3-13-02)()

034. Supervised Marriage and Family Therapy Experience. Must meet the three thousand (3,000) hour requirement as outlined in Section 54-3405C(3), Idaho Code. Effective July 1, 2004, a Idaho Marriage and Family Therapist must be registered with the Board to provide post graduate supervision for those pursuing marriage and family therapist licensure in Idaho. Completion of at least three thousand (3,000) hours of graduate or post-graduate supervised experience in marriage and family therapy that meets the following requirements: (3-29-12)()

a. A minimum of two thousand (2,000) post~~graduate~~-~~master's~~ direct client contact hours, ~~in no less than a two (2) year time period shall~~ over a period of not less than two (2) years, which must include a minimum of one thousand (1,000) direct client contact hours with couples, ~~and~~ families, and other systems; and ~~(4-4-13)()~~

b. A minimum of ~~7~~two hundred (200) hours of post-master's supervision. ~~(4-4-13)()~~

c. Other hours must support development as a marriage and family therapist, and may include: additional hours of supervision, additional practicum hours above the three hundred (300) hours required in Subsection 230.02 of these rules, writing clinical reports, writing case notes, case consultation, coordination of care, administering tests, and attending workshops, training sessions, and conferences. ()

~~ed.~~ Effective July 1, 2014 a ~~A~~ minimum of one hundred (100) hours post-~~graduate~~master's supervision must be obtained from a registered marriage and family therapist supervisor. The remaining one hundred (100) hours of supervision may also be obtained from a licensed clinical professional counselor registered as a supervisor with the Board, licensed psychologist, licensed clinical social worker registered as a supervisor with the Board of Social Work Examiners, or licensed psychiatrist who documents: ~~(3-29-12)()~~

i. A minimum of five (5) years of experience providing marriage and family therapy; and (3-20-04)

ii. Fifteen (15) contact hours of education in supervisor training; and (3-20-04)

iii. Has not been the subject of any disciplinary action for five (5) years immediately prior to providing supervision. (3-20-04)

~~de.~~ No more than one hundred (100) hours of group supervision shall be allowed. Group supervision shall be defined as up to six (6) supervisees and one (1) supervisor; and (3-29-12)

~~ef.~~ Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)

~~fg.~~ Supervision must employ observation of client contact such as the use of audio technologies or video technologies or co-therapy, or live supervision; and (3-29-12)

~~gh.~~ In accordance with the adopted Codes of Ethics prohibiting dual relationships, a supervisor shall not act as an applicant's personal Professional Counselor/Therapist. (3-13-02)

~~hi.~~ The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

~~ij.~~ Supervision obtained in another state jurisdiction or from a supervisor in another jurisdiction must conform with the state jurisdiction's requirements provided they are substantially equivalent to Idaho's requirements. ~~(3-29-12)()~~

~~045.~~ **Examination.** (3-13-02)

a. The Board requires successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or another recognized competency examination in marriage and family therapy that is approved by the Board. ~~(3-13-02)()~~

b. The examination will be conducted at a time and place specified by the Board. (3-13-02)

c. Successful passage of the examination is defined by the Board as achievement of the passing score set by the AMFTRB or the examining entity for examination being administered. Reexamination shall consist of the entire examination. ~~(3-13-02)()~~

239. MARRIAGE AND FAMILY THERAPIST SUPERVISOR REQUIREMENTS (RULE 239).

~~Effective July 1, 2004, I~~ Licensed marriage and family therapists in Idaho shall be registered with the board to provide

supervision for those individuals pursuing licensure in the state of Idaho as a marriage and family therapist.

~~(3-20-04)~~()

01. Requirements for Registration. (3-20-04)

a. Possess two (2) years experience as a licensed marriage and family therapist and document at least two thousand (2,000) hours of direct client contact with couples, ~~and families, and other systems.~~ ~~(3-20-04)~~()

b. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (3-20-04)

c. Have not been subject to discipline for five (5) years prior to registration. (3-20-04)

02. Registration. A marriage and family therapist shall fully complete the application form as established by the board and submit the designated fee as adopted by board rule. (3-20-04)

a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. The applicant shall include a copy of the informed consent form used to ensure clients are aware of the roles of the supervisor and supervisee. (3-25-16)

b. A supervisor's registration shall be valid only so long as the supervisor's marriage and family therapist license remains current and in good standing, is not disciplined, and is renewed as provided in these rules. (3-25-16)

03. Supervision. (3-20-04)

a. A registered marriage and family therapist supervisor shall provide supervision in conformance with the guidelines for supervisors adopted by the American Association for Marriage and Family Therapists and the guidelines set forth in the AAMFT Code of Ethics. (3-25-16)

b. Unless the primary work role of an individual is as a clinical supervisor a registered marriage and family therapist shall not supervise more than six (6) supervisees, either in one-to-one or group supervision, at any time regardless of the modality (individual, dyad, or group) of supervision. (3-29-12)

c. Supervision shall be provided in a face-to-face setting. Face-to-face setting may include a secure live electronic connection between the supervisor and supervisee. (3-25-16)

04. Renewal. Subject to the conditions in Paragraph 239.04.c. of this rule, a supervisor's registration is valid for a term of five (5) years. To renew a supervisor registration, the registered supervisor must submit to the Board a complete application for registration renewal prior to the expiration of the current registration on forms approved by the Board and meet the following requirements: (3-25-16)

a. Hold an active Idaho marriage and family therapist license which has not been subject to discipline and is current and in good standing; and (3-25-16)

b. Document six (6) hours of continuing education in advanced supervisor training as approved by the Board and completed within the previous five (5) years. (3-25-16)

c. For supervisors registered prior to the effective date of Subsection 239.04 of this rule, the following renewal requirements and conditions apply: (3-25-16)

i. A registered supervisor who has been registered for at least five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2018. (3-25-16)

ii. A registered supervisor who has been registered for less than five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2020. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

245. REGISTERED INTERNS (RULE 245).

~~An individual pursuing Idaho licensure as a Professional Counselor may register with the Board as an Intern. An individual pursuing Idaho licensure as a Marriage and Family Therapist shall be a Licensed Associate Marriage and Family Therapist or Licensed Professional Counselor, or register prior to commencement of supervised experience with the Board as an Intern in compliance with Section 54-3402, Idaho Code. If the Marriage and Family Therapist applicant's supervised experience was obtained out of state, such applicant must meet the requirements of Rule 238.03, except that applicant's supervisor need not be registered with the Board.~~ The Board may issue a registration to allow an intern to engage in the practice of counseling or marriage and family therapy while completing either the supervised experience or supplemental practicum hours required for licensure. A registered intern may only practice under the direct supervision of a person registered as a supervisor with the Board or otherwise approved to provide supervision under this chapter. (3-29-12)()

01. Requirements for Registration. An applicant must submit a completed application on a form approved by the Board together with the required fee and meet the following requirements: (4-2-03)()

a. Possess a graduate degree in counseling, marriage and family therapy, or a closely related field from an accredited university or college. (4-2-03)

b. ~~Be actively pursuing postgraduate supervised experience.~~ (4-2-03)

e. Designate a supervisor who is registered with the board as a supervisor as set forth in these rules or who is otherwise approved to provide marriage and family therapy supervision as ~~defined in Section 54-3405C, Idaho Code, and who shall be responsible to provide supervision~~ set forth in Section 238 of these rules. (3-29-12)()

02. Registration Supervision. ~~An individual applying for registration as a Counselor Intern or Marriage and Family Therapist Intern shall fully complete the application form as established by the Board and submit the designated fee as adopted by Board rule.~~ The designated supervisor is responsible to provide supervision and ensure that a Registered Intern is competent to practice such counseling or marriage and family therapy as may be provided. (4-2-03)()

~~03. Practice.~~ (4-2-03)

~~a. A Registered Intern may only practice counseling or marriage and family therapy under the direct supervision of a Counselor Supervisor, registered with the Board or Marriage and Family Therapist Supervisor, registered with the Board who shall be responsible to ensure that a Registered Intern is competent to practice such counseling or marriage and family therapy as may be provided.~~ (3-29-12)

b03. Designation of Intern Status. Only a Registered Intern may use the title Registered Counselor Intern or Registered Marriage and Family Therapist Intern. Registered interns must explicitly state that they are interns in their documentation and advertising, such as business cards, informed consent forms, and other disclosures. (3-29-12)()

e04. Expiration. An individual shall not practice as an intern for more than four (4) years from the original date of registration, unless good cause is demonstrated to the board. (4-2-03)()

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.15.01 – RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-1802

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-3401 and 54-3404, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The Board of Professional Counselors and Marriage and Family Therapists is amending its rules to clarify areas of the rule that are confusing, to increase portability for individuals moving to Idaho, and to increase flexibility for completion of continuing education requirements. Specifically, the pending rule clarifies confusing language regarding group supervision and the informed consent requirements for patients who are treated by an individual who is practicing under supervision. The changes also increase portability for individuals moving to Idaho by recognizing licenses that are equivalent to an Idaho license but titled differently. It will allow the Board to credit supervision hours that an applicant completed in another state under a registration or permit rather than a “license.” Finally, the rule increases flexibility for licensees by allowing all continuing education requirements to be completed through online and home study courses, and updates and removes outdated and unnecessary language.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 326-331](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 54-3401 and 54-3404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 Board of Professional Counselors and Marriage and Family Therapists is amending its rules to clarify areas of the rule that are confusing, to increase portability for individuals moving to Idaho, and to increase flexibility for completion of continuing education requirements. Specifically, the proposed rule clarifies confusing language regarding group supervision and the informed consent requirements for patients who are treated by an individual who is practicing under supervision. The changes also increase portability for individuals moving to Idaho by recognizing licenses that are equivalent to an Idaho license but titled differently. It will allow the Board to credit supervision hours that an applicant completed in another state under a registration or permit rather than a "license." Finally, the rule increases flexibility for licensees by allowing all continuing education requirements to be completed through online and home study courses, and updates and removes outdated and unnecessary language.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule was discussed and decided upon during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1501-1802

149. MATERIALS TO BE FILED BY ALL LICENSURE APPLICANTS (RULE 149).

Each applicant for licensure shall: (3-13-02)

01. Complete an Application. Complete an application upon a form prescribed by the Board. (3-13-02)

02. Provide Verification of Educational Program. Verify completion of the approved educational program identified on the application with official graduate transcripts. Official transcripts must be received by the Board directly from the registrar of the appropriate college or university. (3-13-02)

03. Submit Verification of Supervised Experience. The verification of supervised experience shall be provided directly to the Board by those supervisors listed on the application. (3-13-02)

04. Submit Application Fee. Submit a non-refundable application fee as determined by Subsection 250.01. (3-13-02)

05. Deadline. To be considered by the Board, a properly completed application together with all supporting documentation and required fees must be received by the Bureau at least seven (7) calendar days prior to the next scheduled meeting of the Board. (3-30-06)

06. Lack of Activity. Applications on file with the Board from an applicant who has not provided any written contact with the Board during the previous twelve (12) consecutive months shall be deemed denied and shall be terminated upon a thirty (30) day written notice, unless good cause is demonstrated to the Board. ~~(3-30-06)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

200. COUNSELOR SUPERVISOR REQUIREMENTS (RULE 200).

Effective July 1, 2004, Idaho licensed counselors shall be registered with the Board in order to provide supervision for those individuals pursuing licensure in Idaho as a counselor. (3-29-12)

01. Requirements for Registration. (4-2-03)

a. Document at least two (2) years experience as a licensed counselor. (3-30-07)

b. Document at least one thousand five hundred (1,500) hours of direct client contact as a counselor. (4-2-03)

c. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (4-2-03)

d. Have not been the subject of any disciplinary action for five (5) years prior to application for registration, provided that the Board may in its discretion approve a supervisor with disciplinary action for failing to complete continuing education requirements. ~~(4-2-03)~~ ()

02. Registration. A supervisor applicant shall submit to the Bureau a completed application form as approved by the Board. (4-2-03)

a. Upon receipt of a completed application verifying compliance with the requirements for

registration as a supervisor, the applicant shall be registered as a supervisor. ~~The applicant shall include a copy of the informed consent form used to ensure clients are aware of the roles of the supervisor and supervisee.~~

~~(3-29-12)()~~

b. A supervisor's registration shall be valid only so long as the supervisor's counselor license remains current and in good standing, is not disciplined, and is renewed as provided in these rules. (3-25-16)

03. Supervision. (4-2-03)

a. A Registered Counselor Supervisor shall provide supervision in conformance with the guidelines for supervisors set forth in the ACA Code of Ethics. (3-29-12)

b. A Registered Counselor Supervisor must ensure that informed consent containing information about the roles of the supervisor and supervisee is obtained from clients of the supervisee. ()

~~**b.c.**~~ Unless the primary work role of an individual is as a clinical supervisor a Registered Counselor Supervisor shall not provide supervision to more than six (6) supervisees concurrently. (3-29-12)

~~**ed.**~~ Supervision shall be provided in a face-to-face setting. Face-to-face setting may include a secure live electronic face-to-face connection between the supervisor and supervisee. (3-25-16)

04. Renewal. Subject to the conditions in Paragraph 200.04.c. of this rule, a supervisor's registration is valid for a term of five (5) years. To renew a supervisor registration, the registered supervisor must submit to the Board a complete application for registration renewal prior to the expiration of the current registration on forms approved by the Board and meet the following requirements: (3-25-16)

a. Hold an active Idaho counselor license which has not been subject to discipline and is current and in good standing; and (3-25-16)

b. Document six (6) hours of continuing education in advanced supervisor training as approved by the Board and completed within the previous five (5) years. (3-25-16)

~~**c.** For supervisors registered prior to the effective date of Subsection 200.04 of this rule, the following renewal requirements and conditions apply:~~ (3-25-16)

~~**i.** A registered supervisor who has been registered for at least five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2018.~~ (3-25-16)

~~**ii.** A registered supervisor who has been registered for less than five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2020.~~ (3-25-16)

201. -- 224. (RESERVED)

225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE (RULE 225).

Licensure as a "clinical professional counselor" shall be restricted to persons who have successfully passed the required examination and have met the following requirements: (3-29-12)

01. License. Hold a ~~valid~~ licensed professional counselor license that is current and in good standing in this state or in another state that has substantially similar requirements to a licensed professional counselor in this state; and ~~(3-25-16)()~~

02. Experience. Document two thousand (2,000) hours of direct client contact experience under supervision accumulated in no less than a two (2) year period after licensure or other authorization to practice in any state. ~~(3-29-12)()~~

a. All applicants for Clinical Professional Counselor license must provide verification of meeting at

least one thousand (1,000) hours of supervised experience under the supervision of a licensed Clinical Professional Counselor registered as a supervisor with the Board. The remainder of the supervision may be provided by licensed Psychiatrists, Licensed Psychologists, Licensed Clinical Social Workers registered as supervisors with the Board of Social Work Examiners, or Marriage and Family Therapists registered as supervisors with the Board. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for license and supervision are substantially equivalent to the requirements of Title 54, Chapter 34, Idaho Code. (3-25-16)

b. One (1) hour of clinical supervision for every thirty (30) hours of direct client contact is required. Individual supervision is defined as one (1) hour of face-to-face, one-on-one (1:1) or one-to-two (1:2) supervision to every thirty (30) hours of direct client contact. Supervision shall be provided in a face-to-face setting. Face-to-face setting may include a secure live electronic face-to-face connection between the supervisor and supervisee. (3-25-16)

c. No more than one-half (1/2) of ~~the required supervision hours may be~~ group supervision ~~shall be allowed.~~ ~~(3-30-07)~~()

03. Examination. Successful passage of the required written examination. (3-29-12)

04. Recommendation of the Supervisor(s). The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

425. CONTINUING EDUCATION (RULE 425).

Every person holding an Idaho license as a Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or a Marriage and Family Therapist must complete in each twelve-month period preceding the renewal of a license, twenty (20) contact hours of continuing education. A contact hour is one (1) hour of actual participation in a continuing education activity, exclusive of breaks. (3-29-10)

01. Contact Hours. The contact hours of continuing education must be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. No less than three (3) contact hours for each renewal period must be in ethics, which must be specific to legal issues, law, or ethics. ~~Ethics contact hours must be obtained in a face to face setting where you can interact with the instructor and participants.~~ Therapeutic workshops, retreats and other self-help activities are not considered continuing education training unless specific parts of the experience are applicable to counseling or therapy practice. ~~(4-4-13)~~()

02. Documentation of Attendance. It shall be necessary for the licensee to maintain documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be provided to the Board upon request by the Board or its agent. (3-29-10)

03. Approved Contact Hours, Limitations, and Required Documents. (3-29-10)

a. College or University Courses for Credit or Audit. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. However, all courses are subject to Board approval. For college or university courses, one (1) semester credit equals fifteen (15) contact hours; one (1) quarter credit equals ten (10) contact hours. The licensee must provide the Board with a copy of the licensee's transcript substantiating any hours attended by the licensee. (3-29-10)

b. Seminars, Workshops, Conferences. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. Teleconferences must feature an interactive format in order to qualify for contact hour credit. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor. The licensee must provide the Board with a copy of the certificate, or letter signed by course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. (3-29-10)

c. Publications. A maximum of four (4) contact hours may be counted in this category during each reporting period. Publication activities are limited to articles in journals, a chapter in an edited book, or a published book or professional publication. The licensee must provide the Board with a copy of the cover page or the article or book in which the licensee has been published. For a chapter in an edited book the licensee must submit a copy of the table of contents. (3-29-10)

d. Presentations. A maximum of four (4) contact hours may be counted in this category during each reporting period. Class, conference, or workshop presentations may be used for contact hour credit if the topic is germane to the field. A specific presentation given repeatedly can only be counted once. A particular presentation will qualify for contact hour credit one (1) time in a five (5) year period. Only actual presentation time may be counted; preparation time does not qualify for contact hour credit. The licensee must provide the Board with a copy of the conference program or a letter from the sponsor, host organization, or professional colleague. (3-29-12)

e. Clinical Supervision and Case Consultation. A maximum of five (5) contact hours of received supervision/consultation may be counted in this category during each reporting period. In order to qualify for contact hour credit, supervision/consultation must be received on a regular basis with a set agenda. No credit will be given for the licensee's supervision of others. The licensee must provide the Board with a letter from the supervisor or consultant listing periods of supervision or consultation. (4-4-13)

f. Dissertation. A maximum of five (5) contact hours may be counted in this category during each reporting period. The licensee must provide the Board with a copy of the licensee's transcript and the title of the dissertation. (3-29-10)

g. Leadership. A maximum of four (4) contact hours may be counted in this category during each reporting period. The licensee must provide the Board with a letter from a professional colleague listing the position of leadership, periods of leadership, and the name of the organization under which the leadership took place. The following leadership positions qualify for continuing education credits: (3-29-10)

- i. Executive officer of a state or national counseling or therapy organization; (3-29-12)
- ii. Editor or editorial board service of a professional counseling or therapy journal; (3-29-12)
- iii. Member of a national ethics disciplinary review committee rendering licenses, certification, or professional membership; (3-29-10)
- iv. Active member of a counseling or therapy working committee producing a substantial written product; (3-29-10)
- v. Chair of a major counseling or therapy conference or convention; or (3-29-10)
- vi. Other leadership positions with justifiable professional learning experiences. (3-29-10)

h. Home Study and On-line Education. ~~A maximum of ten (10) contact hours may be counted through self-study during each reporting period. In order for a~~ **There is no limit to the contact hours that a licensee may obtain in this category during each reporting period.** ~~Home study or on-line courses~~ **do** qualify for contact hours, **provided that** the course ~~must be~~ **is** provided by a Board-approved continuing education provider or a course pre-approved by the Board. (3-29-12)()

i. Copy of Certification Required. A licensee applying for home study or on-line credit must provide the Board a copy of the certification that is verified by the authorized signatures from the course instructors, providers, or sponsoring institution and substantiates any hours completed by the licensee. A licensee seeking contact credit for reading a publication must submit results from a test on the information contained within the publication and administered by an independent third-party. (3-29-10)

j. Continuing Education Credit. Continuing education credit may be granted for a maximum of two (2) hours each renewal period for time spent attending one (1) Board meeting. ~~Members of the Board are not entitled~~

~~to continuing education credit for Board service.~~

~~(3-29-10)~~()

04. Excess Hours. Continuing education hours accumulated during the twelve (12) months immediately preceding the license renewal date may be applied toward meeting the continuing education requirement for the next license renewal. No more than ten (10) hours in excess of the required twenty (20) hours shall be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (3-29-12)

05. Compliance Audit. The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-3407, Idaho Code. (4-2-03)

06. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must request such exemption prior to renewal and provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. There is no continuing education required of those holding a current inactive license. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

~~550. RULEMAKING HISTORY PRIOR TO JULY 1, 1993 (RULE 550).~~

~~Adopted October 4, 1983~~

~~Amended and Readopted December 24, 1985~~

~~Effective January 13, 1986~~

~~Amended and Readopted May 10, 1988~~

~~Effective May 30, 1988~~

~~Amended and Readopted May 16, 1991~~

~~(7-1-93)~~

~~551.0. -- 999. (RESERVED)~~

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.17.01 – RULES OF THE STATE BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-4705 and 54-4708, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule will clarify the requirements and qualifications for an acupuncture trainee permit, and ensure trainees demonstrate competency in clean needle techniques prior to providing treatments to patients without the supervisor's presence. In addition, the pending rule establishes supervision standards for licensed and certified acupuncturists who provide supervision to trainees and technicians.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 332-335](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 54-4705 and 54-4708, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

This proposed rule will clarify the requirements and qualifications for an acupuncture trainee permit, and ensure trainees demonstrate competency in clean needle techniques prior to providing treatments to patients without the supervisor's presence. In addition, the proposed rule establishes supervision standards for licensed and certified acupuncturists who provide supervision to trainees and technicians.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1701-1801

200. QUALIFICATIONS FOR LICENSURE OR CERTIFICATION (RULE 200).

01. Requirements for Licensure. Applicants for licensure shall submit a complete application, required fee, and official certified documentation of either: (3-30-01)

- a. Certification from NCCAOM; or (5-3-03)
- b. Graduation from an approved formal full-time acupuncture program of at least one thousand seven hundred twenty-five (1,725) hours of entry-level acupuncture education which includes a minimum of one thousand (1000) hours of didactic course work and five hundred (500) clinical hours practice; and (3-30-01)
- c. Successful completion of an acupuncture internship, or other equivalent experience as approved by the Board; and (3-30-01)
- d. Receipt of a passing grade on an NCCAOM Acupuncture certification examination; or (3-30-01)
- e. Other demonstration of proficiency as uniformly required by the Board for other similarly qualified applicants for licensure; and (3-30-01)
- f. Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. (3-30-01)

02. Requirements for Certification. Applicants for certification shall submit a complete application, required fee and official certified documentation of either: (3-30-01)

- a. Successful passage of an examination or other demonstration of proficiency as approved by the board; and (4-2-08)
- b. Successful completion of the requirements for full membership of the American Academy of Medical Acupuncture; or (4-2-08)
- c. Possess a doctoral degree in chiropractic, dentistry, podiatric medicine, or naturopathic medicine from a college or university accredited by an organization approved by the U.S. Department of Education or Idaho State Board of Education; and (4-2-08)
- d. Successful completion of a minimum of one hundred (100) hours of didactic course work in acupuncture taught by an NCCAOM certified acupuncturist who has been practicing acupuncture for at least five (5) years and is currently licensed, two hundred (200) hours of practice as a certified technician or as an acupuncture trainee permit holder over a one (1) year period, twenty-five (25) case studies; and (3-21-12)
- e. Receipt of a passing grade on a board approved examination that measures minimum competency; and (4-2-08)
- f. Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. (3-30-01)

~~**03. Requirements for Acupuncture Trainee Permit.** Applicants for Acupuncture trainee permit shall submit a complete application, required fee, and official certified documentation of either: (3-21-12)~~

- ~~a. Current enrollment in an Approved Acupuncture Program and actively pursuing completion of the~~

~~program; or (3-21-12)~~

~~b. Must meet the requirement for certification as set forth in Subsection 200.02.e. and complete the one hundred (100) hours of didactic course work as set forth in Subsection 200.02.d. (3-21-12)~~

~~e. Permit holders must work under the board approved supervision of a licensed or certified acupuncturist. (3-21-12)~~

~~d. The permit will expire one (1) year from date of issue. The permit may be extended in accordance with Section 54-4708, Idaho Code. (3-21-12)~~

201. ACUPUNCTURE TRAINEE PERMIT.

The Board may issue an acupuncture trainee permit to allow a person to engage in the practice of acupuncture while actively pursuing licensure or certification. The permit will expire one (1) year from date of issue. The permit may be extended in accordance with Section 54-4708, Idaho Code. The holder of an acupuncture trainee permit may only practice under the supervision of a person licensed or certified under this chapter who meets the requirements in Section 404 of these rules. An applicant for a permit must present evidence satisfactory to the Board of meeting the following requirements: ()

01. Application. An applicant must submit a completed application on a form approved by the Board together with the required fee. ()

02. Education. An applicant must submit documentation of either: ()

a. Current enrollment in an Approved Acupuncture Program and actively pursuing completion of the program; or ()

b. Satisfaction of the requirement for certification as set forth in Paragraph 200.02.c. of these rules, and successful completion of the one hundred (100) hours of didactic course work as set forth in Paragraph 200.02.d. of these rules. ()

03. Supervision. Submission of a supervision plan specifying at a minimum the name of the supervisor and the setting and location where the permit holder will practice. A supervision plan may be approved by a designated Board member. ()

~~204. -- 225. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

404. SUPERVISION OF TRAINEES AND TECHNICIANS (RULE 404).

A licensed or certified acupuncturist providing supervision to trainees or technicians shall be responsible for the services provided by such individuals. Failure to adequately supervise such an individual may subject the supervisor to discipline. (4-4-13)

01. Qualifications of Supervisors. Prior to providing supervision to a trainee, a supervisor must: ()

a. Have held a current acupuncture license or certification without restriction for a minimum of five (5) years. ()

b. Have not been the subject of any disciplinary action within the preceding five (5) years, provided that the Board may in its discretion approve a supervisor with disciplinary action for failing to complete continuing education requirements. ()

02. Supervision. For the first one hundred (100) hours of practice, the supervisor must provide

supervision in person when the trainee is providing treatment. After the first one hundred (100) hours of practice, the supervisor may provide supervision by making themselves accessible to the trainee by telephone, or video conferencing, provided that the trainee has successfully completed the requirement in Paragraph 404.02.a. of this rule, and provided that the supervisor meets with the trainee in person on at least a monthly basis during which time the supervisor must review case studies and require the trainee to demonstrate acupuncture point location and needle placement technique. ()

a. Before providing treatment without in-person supervision, the trainee must successfully complete a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. ()

b. The supervisor must provide the trainee with adequate training, which must include at a minimum charting, diagnosis, and treatment plans, and opportunities for the trainee to complete at least twenty-five (25) case studies. ()

c. The supervisor and trainee must keep adequate records of supervision, which shall include at a minimum, summary of case studies in progress or completed by the trainee under supervision, treatment plan for each patient, and the dates of supervision. ()

03. Continuing Education. A supervisor may annually count up to ten (10) hours of supervision of a trainee toward the Category I continuing education requirements. Supervision hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of ten (10) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. ()

04. Completion of Supervision. At the conclusion of supervision of a technician or trainee, the supervisor must verify the hours of supervision, the type of supervision provided to the technician or trainee, and the documentation of at least twenty-five (25) case studies by the technician or trainee. ()

05. Termination of Supervision or Change in Supervisor. A supervisor may terminate supervision at any time by submitting written notice of termination to the Board. ()

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.19.01 – RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-4205, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule will eliminate a barrier to licensure for a licensed nursing home administrator seeking licensure as a residential care facility administrator by allowing work experience in a nursing home facility to qualify.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 338-339](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-4205, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 proposed rule will eliminate a barrier to licensure for a licensed nursing home administrator seeking licensure as a residential care facility administrator by allowing work experience in a nursing home facility to qualify.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 29th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1901-1801

160. NURSING HOME ADMINISTRATOR QUALIFICATIONS FOR LICENSE (RULE 160).

Any applicant who holds a valid Idaho nursing home administrator license must meet the requirements provided in Section 54-4211(2), Idaho Code, and must take and pass the Board-approved residential care administrator examination. This requirement may be waived if the applicant submits evidence satisfactory to the Board that he has at least one (1) year of leadership or management experience working in a residential care facility or nursing home facility within the five (5) years preceding the application. ~~(3-29-10)~~ ()

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.23.01 – RULES OF THE SPEECH, HEARING AND COMMUNICATION SERVICES LICENSURE BOARD

DOCKET NO. 24-2301-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2910, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

In 2018, the Legislature passed **House Bill 411**, which lowers the age for licensure as sign language interpreter from twenty-one (21) to eighteen (18). This pending rule will implement House Bill 411 and ensure conformity between Section 54-2916A, Idaho Code, and Section 260 of these rules.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, **Vol. 18-7, pages 143-144**.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 26th day of October, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, 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 54-2910, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 18, 2018.

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 2018, the Legislature passed HB 411, which lowers the age for licensure as sign language interpreter from twenty-one (21) to eighteen (18). This temporary/proposed rule will implement HB 411 and ensure conformity between Section 54-2916A, Idaho Code, and Section 260 of these rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

On July 1, 2018 HB 411 becomes effective. This temporary/proposed rule is necessary to implement those changes.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a temporary rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jennifer Carr at (208) 577-2599.

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 July 25, 2018.

DATED this 13th Day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2301-1801

260. QUALIFICATIONS FOR SIGN LANGUAGE INTERPRETER LICENSURE (RULE 260).

The Board may grant a sign language interpreter license to an applicant who completes an application as set forth in Section 150 and meets the following: (3-22-18)

01. General. (3-22-18)

a. Be at least ~~twenty-one~~ **eighteen** (~~21~~ **18**) years of age; (~~3-22-18~~) ()

b. Certify that the applicant has not been found guilty, convicted, received a withheld judgment, or suspended sentence for a felony. If the applicant has been found guilty, convicted, received a withheld judgment, or suspended sentence for such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 320 of these rules; and (3-22-18)

c. Certify that the applicant or the applicant's license or certification has not been subject to any disciplinary action by a regulatory entity in another state, territory, or country including, but not limited to, having an application for licensure denied. If the applicant or applicant's license has been subject to discipline, the applicant must submit a written statement of suitability for licensure as set forth in Section 320 of these rules. (3-22-18)

02. Education. Possess a high school diploma or the equivalent; (3-22-18)

03. Examination or Certification. Pass competency examinations approved by the Board or obtain a certification approved by the Board. (3-22-18)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.26.01 – RULES OF THE IDAHO BOARD OF MIDWIFERY

DOCKET NO. 24-2601-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-5504, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The State Board of Midwifery's pending rule will update two documents incorporated by reference to reflect the most current publications, delete obsolete waiver language, and clarify current cardiopulmonary resuscitation (CPR) certification for licensure renewal. The Board made one change to the pending rule to approve an additional CPR course for licensees.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 345-348](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hugues at (208) 334-3233.

Dated this 1st day of November, 2018.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-5504, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 State Board of Midwifery's proposed rule will update two documents incorporated by reference to reflect the most current publications, delete obsolete waiver language, and clarify current cardiopulmonary resuscitation certification for licensure renewal.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Prevention of Perinatal Group B Streptococcal Disease, published by the Centers for Disease Control and Prevention, dated August 16, 2002, will be updated to incorporate the November 19, 2010 publication. The Analysis of the 2001 Job Analysis Survey published by the North American Registry of Midwives will be updated to incorporate the 2016 Job Analysis Survey. By updating these documents, the Board is ensuring they reflect the most current publications.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Carr at (208) 334-3233.

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 24, 2018.

Dated this 29th day of August, 2018.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2601-1801

004. INCORPORATION BY REFERENCE (RULE 4).

The following documents are incorporated by reference into these rules, and are available at the Board's office and through the Board's website: (3-29-10)

01. Prevention of Perinatal Group B Streptococcal Disease. Published by the Centers for Disease Control and Prevention, MMWR 200210;549 (No. RR 140), dated August November 169, 20102, referenced in Paragraph 350.01.d. (3-29-10)()

02. Essential Documents of the National Association of Certified Professional Midwives. Copyright date 2004, referenced in Subsection 356.01. (3-29-10)

03. Analysis of the 20016 Job Analysis Survey. Published by the North American Registry of Midwives (NARM). (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

100. QUALIFICATIONS FOR LICENSURE (RULE 100).

01. Applications. Applications for licensure must be submitted on Board-approved forms. (3-29-10)

02. Qualifications. Applicants for licensure must submit a completed application, required application and licensing fees, and documentation, acceptable to the Board, establishing that the applicant: (3-29-10)

a. Currently is certified as a CPM by NARM or a successor organization. (3-29-10)

b. Has successfully completed Board-approved, MEAC-accredited courses in pharmacology, the treatment of shock/IV therapy, and suturing specific to midwives. (3-29-10)

~~**03. Waiver of Current CPM Certification Requirement.** The Board may waive the current CPM certification requirement, specified here in Paragraph 100.02.a., for any applicant who has continuously practiced midwifery in Idaho for at least five (5) years prior to July 1, 2009. To qualify for the waiver, the applicant must apply for licensure before July 1, 2010 and submit with the application documentation, acceptable to the Board, of the following: (3-29-10)~~

~~**a.** The applicant's primary attendance at seventy five (75) births within the past ten (10) years, ten (10) of which occurred in the two (2) years immediately preceding the applicant's application for licensure; (3-29-10)~~

~~**b.** Current certification in adult, infant, and child cardiopulmonary resuscitation and in neonatal resuscitation obtained through completion of American Heart Association approved cardiopulmonary resuscitation courses and American Academy of Pediatrics approved neonatal resuscitation courses; and (3-29-10)~~

~~e. Complete practice data, as referenced in Subsection 200.04, for the two (2) years preceding the application for licensure. The complete practice data documentation must be submitted on a Board approved form. (3-29-10)~~

043. Incomplete or Stalled Applications. The applicant must provide or facilitate the provision of any supplemental third party documents that may be required by the Board. If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board shall be deemed denied and it shall be terminated upon thirty (30) days written notice, unless good cause is established to the Board. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

200. RENEWAL OF LICENSE (RULE 200).

01. Expiration Date. A licensed midwife's license expires on the licensed midwife's birth date. The license must be annually renewed before the licensed midwife's birth date in accordance with Section 67-2614, Idaho Code. Licenses that are not renewed as required will be cancelled pursuant to Section 67-2614, Idaho Code. (3-29-10)

02. Reinstatement. A license that has been cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (3-29-10)

03. Application for Renewal. In order to renew a license a licensed midwife must submit a timely, completed, Board-approved renewal application form and pay the required application and renewal fees. (3-29-10)

04. Complete Practice Data. The information submitted by the licensed midwife on the Board-approved application form must include complete practice data for the twelve (12) months immediately preceding the date of the renewal application. Such information shall include: (3-29-10)

- a. The number of clients to whom the licensed midwife has provided care; (3-29-10)
- b. The number of deliveries, including; (3-29-10)
 - i. The number of cesareans; (3-29-10)
 - ii. The number of vaginal births after cesarean (VBACs); (3-29-10)
- c. The average, oldest, and youngest maternal ages; (3-29-10)
- d. The number of primiparae; (3-29-10)
- e. All APGAR scores below five (5) at five (5) minutes; (3-29-10)
- f. The number of prenatal transfers and transfers during labor, delivery and immediately following birth, including; (3-29-10)
 - i. Transfers of mothers; (3-29-10)
 - ii. Transfers of babies; (3-29-10)
 - iii. Reasons for transfers; (3-29-10)
 - iv. Transfers of all newborns being admitted to the neonatal intensive care unit (NICU) for more than twenty four (24) hours. (3-29-10)

- g. Any perinatal deaths occurring up to six weeks post-delivery, broken out by: (3-29-10)
- i. Weight; (3-29-10)
- ii. Gestational Age; (3-29-10)
- iii. Age of the baby; (3-29-10)
- iv. Stillbirths, if any; (3-29-10)
- h. Any significant neonatal or perinatal problem, not listed above, during the six (6) weeks following birth. (3-29-10)

05. Current Cardiopulmonary Resuscitation Certification. A licensed midwife to renew their license must certify on their renewal application that they possess a current certification in adult, infant, and child cardiopulmonary resuscitation and in neonatal resuscitation obtained through completion of American Heart Association or the Health and Safety Institute approved cardiopulmonary resuscitation courses and American Academy of Pediatrics approved neonatal resuscitation courses. ()

056. **Continuing Education Verification.** When a licensed midwife submits a renewal application, the licensed midwife must certify by signed affidavit that the annual continuing education requirements set by the Board have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with continuing education requirements. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

325. INFORMED CONSENT (RULE 325).

01. Informed Consent Required. A licensed midwife must obtain and document informed consent from a client before caring for that client. The informed consent must be documented on an informed consent form, signed and dated by the client, in which the client acknowledges, at a minimum, that the following information has been provided to the client by the midwife: (3-29-10)

- a. The licensed midwife's training and experience; (3-29-10)
- b. Instructions for obtaining a copy of the Board's rules; (3-29-10)
- c. Instructions for obtaining a copy of the Essential Documents of the NACPM and Analysis of the 2016 Job Analysis Survey, published by NARM; ~~(3-29-10)~~ ()
- d. Instructions for filing complaints with the Board; (3-29-10)
- e. Notice that the licensed midwife does or does not have professional liability insurance coverage; (3-29-10)
- f. A written protocol for emergencies, including hospital transport that is specific to each individual client; and (3-29-10)
- g. A description of the procedures, benefits and risks of out-of-hospital birth, primarily those conditions that may arise during delivery. (3-29-10)

02. Record of Informed Consent. All licensed midwives must maintain a record of all signed informed consent forms for each client for a minimum of nine (9) years after the last day of care for such client. (3-29-10)

IDAPA 27 – BOARD OF PHARMACY

27.01.01 – GENERAL PROVISIONS

DOCKET NO. 27-0101-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 379 through 384](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alex Adams, Executive Director, at (208) 334-2356.

Dated this 25th day of October, 2018.

Alex J. Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-1717, Idaho Code.

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

PUBLIC HEARING
Wednesday, October 24, 2018 – 1:00 p.m. (MDT)

Idaho State Capitol Building
Room WW53
700 W. Jefferson Street
Boise, ID 83702

Written comments received by October 15, 2018, will be included in the Board’s distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

The hearing site 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:

Over the past two years, the Board of Pharmacy has engaged in strategic efforts to promote regulatory reform and reduce obstacles to licensure. Last year, the Board of Pharmacy cut 55% of its rules by word count, 62% of restrictions, and eliminated six categories of licensure.

This year, the Board intends to continue with these efforts. In particular, the Board intends to eliminate IDAPA 27.01.06, Rules Governing DME, Manufacturing, and Distribution, as much of the chapter needlessly duplicates other state laws. The Board will carefully extract the few rules from the chapter that are needed to protect public health, and add them to other Board chapters as appropriate. To IDAPA 27.01.01, the Board intends to add a definition for “DME Outlet,” remove the definition for “MPJE,” and add distributing to the section of unprofessional conduct regarding misbranded or adulterated products. Lastly, the Board aims to make minor technical corrections.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

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 July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 154-155](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at (208) 334-2356.

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 24, 2018 as described above.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1801

010. DEFINITIONS AND ABBREVIATIONS (A – D).

The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms shall have the meanings set forth below: (7-1-18)

- 01. ACCME.** Accreditation Council for Continuing Medical Education. (7-1-18)
- 02. Accredited School or College of Pharmacy.** A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. (7-1-18)
- 03. ACPE.** Accreditation Council for Pharmacy Education. (7-1-18)
- 04. ADS – Automated Dispensing and Storage.** A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. (7-1-18)
- 05. Biological Product.** A virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), that is applicable to the prevention, treatment, or cure of a disease or condition of human beings and licensed under Section 351(k) of the Public Health Service Act, 42 U.S.C. Section 262(i). (7-1-18)
- 06. Biosimilar.** A biological product highly similar to a specific reference biological product that is licensed by the FDA pursuant to 42 U.S.C. Section 262(k) and published in the Purple Book. (7-1-18)
- 07. CDC.** United States Department of Health and Human Services, Centers for Disease Control and Prevention. (7-1-18)
- 08. Change of Ownership.** A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (7-1-18)
- 09. CLIA-Waived Test.** A test that is waived under the federal Clinical Laboratory Improvement Amendments (CLIA) of 1988. (7-1-18)
- 10. Clinical Guidelines.** Recommendations from a reputable organization that are evidence-based and intended to optimize patient care in specific clinical circumstances. (7-1-18)

11. **CME.** Continuing medical education. (7-1-18)
12. **Collaborative Pharmacy Practice.** A pharmacy practice whereby one (1) or more pharmacists or pharmacies jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations. (7-1-18)
13. **Collaborative Pharmacy Practice Agreement.** A written agreement between one (1) or more pharmacists or pharmacies and one (1) or more prescribers that provides for collaborative pharmacy practice. (7-1-18)
14. **Community Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (7-1-18)
15. **Continuous Quality Improvement Program.** A system of standards and procedures to identify and evaluate quality-related events and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system. (7-1-18)
16. **CPE.** Continuing pharmacy education. (7-1-18)
17. **CPE Monitor.** An NABP service that allows pharmacists to electronically keep track of CPE credits from ACPE-accredited providers. (7-1-18)
18. **DEA.** United States Drug Enforcement Administration. (7-1-18)
19. **Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. (7-1-18)
20. **DME.** Durable medical equipment. (7-1-18)
21. **DME Outlet.** A registered outlet that may hold for sale at retail DME and the following prescription drugs: pure oxygen for human application, nitrous oxide, sterile sodium chloride, and sterile water for injection. ()
- ~~22.~~ **Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic. (7-1-18)
- ~~23.~~ **Drug Product Substitution.** Dispensing a drug product other than prescribed. (7-1-18)
- ~~24.~~ **DTM – Drug Therapy Management.** Selecting, initiating, or modifying drug treatment pursuant to a collaborative pharmacy practice agreement or statewide protocol agreement. (7-1-18)
- 011. DEFINITIONS AND ABBREVIATIONS (E – N).**
The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms shall have the meanings set forth below: (7-1-18)
01. **Emergency Drugs.** Drugs necessary to meet the immediate therapeutic needs of one (1) or more patients that are not available from any other authorized source in sufficient time to avoid risk of harm due to the delay that would result from obtaining the drugs from another source. (7-1-18)
02. **Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. (7-1-18)
03. **FDA.** United States Food and Drug Administration. (7-1-18)
04. **Flavoring Agent.** An additive in food or drugs when used in accordance with the principles of good pharmacy practices and in the minimum quantity necessary to produce its intended effect. (7-1-18)

- 05. Floor Stock.** Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. (7-1-18)
- 06. FPGEC.** Foreign Pharmacy Graduate Examination Committee. (7-1-18)
- 07. Hazardous Drug.** Any drug listed as such by the National Institute for Occupational Safety and Health or any drug identified by at least one (1) of the following criteria: (7-1-18)
- a.** Carcinogenicity; (7-1-18)
 - b.** Teratogenicity or developmental toxicity; (7-1-18)
 - c.** Reproductive toxicity in humans; (7-1-18)
 - d.** Organ toxicity at low doses in humans or animals; (7-1-18)
 - e.** Genotoxicity; or (7-1-18)
 - f.** New drugs that mimic existing hazardous drugs in structure or toxicity. (7-1-18)
- 08. HIPAA.** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (7-1-18)
- 09. Idaho State Board of Pharmacy or Idaho Board of Pharmacy.** The terms Idaho State Board of Pharmacy, Idaho Board of Pharmacy, State Board of Pharmacy, and Board of Pharmacy are deemed synonymous and are used interchangeably to describe the entity created under the authority of Title 54, Chapter 17, Idaho Code. Unless specifically differentiated, “the Board” or “Board” also means the Idaho State Board of Pharmacy. (7-1-18)
- 10. Institutional Pharmacy.** A pharmacy located in an institutional facility. (7-1-18)
- 11. Interchangeable Biosimilar.** A licensed biosimilar product determined by the FDA to be therapeutically equivalent to the reference biological product and published in the Purple Book. (7-1-18)
- 12. Limited Service Outlet.** Limited service outlets include, but are not limited to, sterile product pharmacies, remote dispensing pharmacies, facilities operating narcotic treatment programs, durable medical equipment outlets, prescriber drug outlets, outsourcing facilities, nuclear pharmacies, cognitive service pharmacies, correctional facilities, offsite ADSs for non-emergency dispensing, reverse distributors, mobile pharmacies, and analytical or research laboratories. ~~(7-1-18)~~ ()
- 13. Maintenance Drug.** A drug intended for the treatment of a health condition or disease that is persistent or otherwise expected to be long lasting in its effects. (7-1-18)
- 14. Medication Synchronization Program.** An opt-in program provided by a pharmacy for aligning the refill dates of a patient’s prescription drugs so that drugs that are refilled at the same frequency may be refilled concurrently. (7-1-18)
- 15. ~~MPJE.~~ Multistate Pharmacy Jurisprudence Exam.** ~~(7-1-18)~~
- ~~16.~~ NABP.** National Association of Boards of Pharmacy. (7-1-18)
- ~~17.~~ NAPLEX.** North American Pharmacists Licensure Examination. (7-1-18)
- ~~18.~~ NDC.** National Drug Code. (7-1-18)

(BREAK IN CONTINUITY OF SECTIONS)

020. PRACTICE OF PHARMACY: GENERAL APPROACH.

To evaluate whether a specific act is within the scope of pharmacy practice in or into Idaho, a licensee or registrant of the Board must independently determine whether: (7-1-18)

- 01. Express Prohibition.** The act is expressly prohibited by: (7-1-18)
 - a.** The Idaho Pharmacy Act, Title 54, Chapter 17, Idaho Code; (7-1-18)
 - b.** The Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; (7-1-18)
 - c.** The rules of the Idaho State Board of Pharmacy; or (7-1-18)
 - d.** Any other applicable state or federal laws, rules or regulations. (7-1-18)

02. Education ~~and~~, Training, and Experience. The act is consistent with licensee or registrant's education, training, ~~or practice~~ and experience. (7-1-18)()

03. Standard of Care. Performance of the act is within the accepted standard of care that would be provided in a similar setting by a reasonable and prudent licensee or registrant with similar education, training and experience. (7-1-18)

(BREAK IN CONTINUITY OF SECTIONS)

023. UNPROFESSIONAL CONDUCT.

The following acts or practices by any licensee or registrant are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest. (7-1-18)

01. Unethical Conduct. Conduct in the practice of pharmacy or in the operation of a pharmacy that may reduce the public confidence in the ability and integrity of the profession of pharmacy or endangers the public health, safety, and welfare. A violation of this section includes committing fraud, misrepresentation, negligence, concealment, or being involved in dishonest dealings, price fixing, or breaching the public trust with respect to the practice of pharmacy. (7-1-18)

02. Lack of Fitness. A lack of fitness for professional practice due to incompetency, personal habits, drug or alcohol dependence, physical or mental illness, or for any other cause that endangers public health, safety, or welfare. (7-1-18)

03. On-Duty Intoxication or Impairment. Intoxication, impairment, or consumption of alcohol or drugs while on duty, including break periods after which the individual is expected to return to work, or prior to reporting to work. (7-1-18)

04. Diversion of Drug Products and Devices. Supplying or diverting drugs, biologicals, and other medicines, substances, or devices legally sold in pharmacies that allows the circumvention of laws pertaining to the legal sale of these articles. (7-1-18)

05. Unlawful Possession or Use of Drugs. Possessing or using a controlled substance without a lawful prescription drug order. A failed drug test creates a rebuttable presumption of a violation of this rule. (7-1-18)

06. Prescription Drug Order Noncompliance. Failing to follow the instructions of the person writing, making, or ordering a prescription as to its refills, contents, or labeling except as provided in these rules.

(7-1-18)

07. Failure to Confer. Failure to confer with the prescriber when necessary or appropriate or filling a prescription if necessary components of the prescription drug order are missing or questionable. (7-1-18)

08. Excessive Provision of Controlled Substances. Providing a clearly excessive amount of controlled substances. Evidentiary factors of a clearly excessive amount include, but are not limited to, the amount of controlled substances furnished and previous ordering patterns (including size and frequency of orders). (7-1-18)

09. Failure to Counsel or Offer Counseling. Failing to counsel or offer counseling, unless specifically exempted or refused. (7-1-18)

10. Substandard, Misbranded, Adulterated, or Expired Products. Manufacturing, compounding, delivering, ~~distributing~~, dispensing, or permitting to be manufactured, compounded, delivered, ~~distributed~~ or dispensed substandard, misbranded, or adulterated drugs or preparations or those made using secret formulas. Failing to remove expired drugs from stock. ~~(7-1-18)~~()

11. Prescriber Incentives. Allowing a commission or rebate to be paid, or personally paying a commission or rebate, to a person writing, making, or otherwise ordering a prescription. (7-1-18)

12. Exclusive Arrangements. Participation in a plan or agreement that compromises the quality or extent of professional services or limits access to provider facilities at the expense of public health or welfare. (7-1-18)

13. Failure to Report. Failing to report to the Board any violation of statutes or rules pertaining to the practice of pharmacy or any act that endangers the health, safety, or welfare of patients or the public. (7-1-18)

14. Failure to Follow Board Order. Failure to follow an order of the Board. (7-1-18)

15. Use of False Information. Knowingly using false information in connection with the prescribing, delivering, administering, or dispensing of a controlled substance or other drug product is prohibited. (7-1-18)

16. Standard of Care. ~~Providing health care services~~ Acts or omissions within the practice of pharmacy which fail to meet the standard provided by other qualified licensees or registrants in the same or similar setting. ~~(7-1-18)~~()

17. Unnecessary Services or Products. Directly promoting or inducing for the provisions of health care services or products that are unnecessary or not medically indicated. (7-1-18)

IDAPA 27 – BOARD OF PHARMACY
27.01.03 – RULES GOVERNING PHARMACY PRACTICE
DOCKET NO. 27-0103-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no major changes to the pending rule and it is being adopted with one minor change to the prescriber-authorized substitution rule to be responsive to feedback from the medical community.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 390 through 399](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alex Adams, Executive Director, at (208) 334-2356.

Dated this 25th day of October, 2018.

Alex J. Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-1717, Idaho Code.

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

PUBLIC HEARING
Wednesday, October 24, 2018 – 1:00 p.m. (MDT)

Idaho State Capitol Building
Room WW53
700 W. Jefferson Street
Boise, ID 83702

Written comments received by October 15, 2018, will be included in the Board’s distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

The hearing site 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:

With the proposed repeal of IDAPA 27.01.06, “Rules Governing Durable Medical Equipment (DME), Manufacturing, and Distribution,” updates are needed in this chapter to retain critical rules from that chapter. This docket also makes changes in accordance with House Bills 339 and 351, which passed the 2018 Idaho Legislature unanimously. Lastly, this docket makes several technical corrections and other changes to better align with federal law and existing practice.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

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 July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 158-159](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at (208) 334-2356.

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 24, 2018 as described above.

Dated this 30th day of August 2018.

[LINK: LSO Rules Analysis Memo](#)

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0103-1801

~~200. PIC RESPONSIBILITIES AND LIMITATIONS.~~

~~01. Drug Outlets that Must Designate a PIC. The following drug outlets must have a designated PIC by the date of opening and must not thereafter allow a vacancy of a designated PIC to continue for more than thirty (30) sequential days: (7-1-18)~~

~~a. Any drug outlet that dispenses drugs to patients in Idaho; (7-1-18)~~

~~b. Any central drug outlet; and (7-1-18)~~

~~c. Any outsourcing facility. (7-1-18)~~

~~02. PIC and Drug Outlet Responsibility. The PIC is responsible for the management of every part of the drug outlet and its regulated operations. The PIC and the drug outlet each have corresponding and individual responsibility for compliance with applicable state and federal law and these rules. (7-1-18)~~

~~03. PIC Oversight Limitations. A person may neither be designated nor function as the PIC for more than two (2) drug outlets concurrently. (7-1-18)~~

~~201. DRUG OUTLETS THAT DISPENSE PRESCRIPTION DRUGS: MINIMUM FACILITY STANDARDS.~~

A resident drug outlet that dispenses prescription drugs to patients in Idaho must meet the following minimum requirements: (7-1-18)()

01. Security. A drug outlet must be constructed and equipped with adequate security to protect its equipment, records and supply of drugs, devices and other restricted sale items from unauthorized access, acquisition or use. An alarm or other comparable monitoring system is required for any non-institutional drug outlet that stocks controlled substances and is new or remodeled after July 1, 2018. (7-1-18)

02. Patient Privacy. All protected health information must be stored and maintained in accordance with HIPAA. In addition, a community pharmacy that is new or remodeled after March 21, 2012 must provide and maintain a patient consultation area that affords the patient auditory and visual privacy and is compliant with the Americans with Disabilities Act. (7-1-18)

03. Equipment and Storage. A drug outlet must be properly equipped to ensure the safe, clean, and sanitary condition necessary and appropriate for proper operation, the safe preparation of prescriptions, and to

safeguard product integrity. (7-1-18)()

04. Staffing. A drug outlet must be staffed sufficiently to allow for appropriate supervision, to otherwise operate safely and, if applicable, to remain open during the hours posted as open to the public for business. (7-1-18)

05. Controlled Substances Storage. ~~Controlled substances~~ Drug outlets that dispense prescription drugs must be stored ~~controlled substances~~ in a securely locked, substantially constructed cabinet or safe. However, a pharmacy may dispense substances listed in Schedules II, III, IV and V, in whole or in part, throughout the stock of non-controlled substances if doing so would be likely to obstruct the theft or diversion of the controlled substances. (7-1-18)()

06. Controlled Substances Disposal. Expired, excess or unwanted controlled substances that are owned by the drug outlet must be properly disposed of through the services of a DEA-registered reverse distributor or by another method permitted by federal law. (7-1-18)

07. Authorized Access to the Restricted Drug Storage Area. (7-1-18)

~~a.~~ Access to the restricted drug storage area ~~can occur only when a pharmacist or prescriber is on duty.~~ (7-1-18)

~~b.~~ Access must be limited to ~~pharmacists, technicians and pharmacist interns, or in the case of a prescriber drug outlet, to prescribers and appropriate support~~ authorized personnel in accordance with the prescriber's practice act. A pharmacist or prescriber may, however, authorize an individual temporary access to the restricted drug storage area to perform a legitimate non-pharmacy function if the individual remains under the direct supervision of the pharmacist or prescriber. (7-1-18)()

~~c.~~ An institutional facility may also develop an emergency drug access protocol in which a non-pharmacist health professional may enter into the restricted drug storage area of an institutional facility that is otherwise closed, and pursuant to a valid prescription drug order, remove a sufficient quantity of non-controlled drugs necessary to meet the immediate needs of a patient. (7-1-18)

2021. DRUG OUTLETS THAT DISPENSE PRESCRIPTION DRUGS: MINIMUM PRESCRIPTION FILLING REQUIREMENTS.

Unless exempted by these rules, each drug outlet that dispenses prescription drugs to patients in Idaho must meet the following minimum requirements: (7-1-18)

01. Valid Prescription Drug Order. Prescription drugs must only be dispensed pursuant to a valid prescription drug order as set forth in Subchapter D of these rules. (7-1-18)

02. Prospective Drug Review. Prospective drug review, as defined in Section 54-1705, Idaho Code, must be provided as set forth in Section 54-1739, Idaho Code. (7-1-18)

03. Labeling. Each drug must bear a complete and accurate label as set forth in Subchapter D of these rules. (7-1-18)

04. Verification of Dispensing Accuracy. Verification of dispensing accuracy must be performed to compare the drug stock selected to the drug prescribed. If not performed by a pharmacist or prescriber, an electronic verification system must be used that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. A compounded drug may only be verified by a pharmacist or prescriber. (7-1-18)

05. Patient Counseling. Counseling, as defined in Section 54-1705, Idaho Code, must be provided as set forth in Section 54-1739, Idaho Code. (7-1-18)

2032. OFFSITE PHARMACY SERVICES.

A drug outlet may provide offsite pharmacy services at one (1) or more locations. When the services being performed are related to prescription fulfillment or processing, the drug outlet must comply with the following: (7-1-18)

01. Policies and Procedures. The originating drug outlet must have written policies and procedures outlining the offsite pharmacy services to be provided by the central drug outlet, or the offsite pharmacist or technician, and the responsibilities and accountabilities of each party. (7-1-18)

02. Secure Electronic File. The parties share a secure common electronic file or utilize other secure technology, including a private, encrypted connection that allows access by the central drug outlet or offsite pharmacist or technician to information necessary to perform offsite pharmacy services. (7-1-18)

03. Exemption. A single prescription drug order may be shared by an originating drug outlet and a central drug outlet, or offsite pharmacist or technician. The filling, processing and delivery of a prescription drug order by one pharmacy for another pursuant to this section will not be construed as the filling of a transferred prescription or as a wholesale distribution. (7-1-18)

2043. DRUG OUTLETS THAT DISPENSE DRUGS TO PATIENTS WITHOUT AN ONSITE PHARMACIST OR PRESCRIBER.

In addition to all other preceding rules of this subchapter, a drug outlet that dispenses drugs to patients in Idaho that does not have a pharmacist or prescriber onsite to perform or supervise pharmacy operations must comply with the following requirements: (7-1-18)

01. Security and Access. (7-1-18)

a. The drug outlet must maintain video surveillance with an adequate number of views of the full facility and retain a high quality recording for a minimum of ninety (90) days. (7-1-18)

b. Proper identification controls of individuals accessing the restricted drug storage area must be utilized and access must be limited, authorized, and regularly monitored. (7-1-18)

02. Staffing Limitations. The ratio of pharmacists to support personnel may not exceed one (1) pharmacist for every six (6) technicians and pharmacist interns in total across all practice sites. (7-1-18)

03. Technology. The video and audio communication system used to counsel and interact with each patient or patient's caregiver, must be clear, secure, and HIPAA-compliant. (7-1-18)

04. Controlled Substances Inventories. (7-1-18)

a. A perpetual inventory must be kept for all Schedule II controlled substances; and (7-1-18)

b. If a perpetual inventory is not kept for all Schedule III through V substances, the pharmacist or prescriber must inventory and audit at least three (3) random controlled substances quarterly. (7-1-18)

05. Self-Inspection. A pharmacist or prescriber must complete and retain a monthly in-person self-inspection of the drug outlet using a form designated by the Board. (7-1-18)

06. Emergency Situations. (7-1-18)

a. A pharmacist or prescriber must be capable of being on site at the drug outlet within twelve (12) hours if an emergency arises. (7-1-18)

b. The drug outlet must be, or remain, closed to the public if any component of the surveillance or video and audio communication system is malfunctioning, until system corrections or repairs are completed. (7-1-18)

07. Exemption for Self-Service Systems. A self-service ADS that is operating as a drug outlet is exempt from the video surveillance requirement and the self-inspection requirement of this rule. In addition, if counseling is provided by an onsite prescriber or pharmacist, a self-service ADS is exempt from the video and audio communication system requirements of this rule. (7-1-18)

08. Exemption for Veterinarians. Veterinarians practicing in accordance with their Idaho practice act are exempt from this rule. (7-1-18)

2054. DRUGS STORED OUTSIDE OF A DRUG OUTLET FOR RETRIEVAL BY A LICENSED HEALTH PROFESSIONAL.

Drugs may be stored in an alternative designated area outside the drug outlet, including, but not limited to, floor stock, in an emergency cabinet, in an emergency kit, or as emergency outpatient drug delivery from an emergency room at a registered institutional facility, provided the following conditions are met: (7-1-18)

01. Supervising Drug Outlet. Drugs stored in such a manner must remain under the control of, and be routinely monitored by, the supervising drug outlet. (7-1-18)

02. Policies and Procedures. The supervising drug outlet must develop and implement policies and procedures regarding authorized access to drugs stored in the alternative designated area, documentation of drugs used, drug returns and wastage, and regular inventory procedures. (7-1-18)

03. Secure Storage. The area is appropriately equipped to ensure security and protection from diversion or tampering. (7-1-18)

04. Controlled Substances. Controlled substances may only be stored in an alternative designated area as permitted by, and in accordance with, federal law. (7-1-18)

05. Stocking and Replenishing. Stocking or replenishing drugs in an alternative designated area may be performed by a pharmacist or prescriber, or by appropriate support personnel using either an electronic verification system or a two (2) person checking system. (7-1-18)

2065 – 299. (RESERVED)

SUBCHAPTER D – FILLING AND DISPENSING PRESCRIPTION DRUGS
(Rules 300 through 399 - Filling and Dispensing Prescription Drugs)

300. PRESCRIPTION DRUG ORDER: VALIDITY.
Prior to filling or dispensing a prescription drug order, a pharmacist must verify its validity. (7-1-18)

01. Invalid Prescription Drug Orders. A prescription drug order is invalid if not issued: (7-1-18)

a. In good faith; (7-1-18)

b. For a legitimate medical purpose; (7-1-18)

c. By a licensed prescriber; (7-1-18)

d. Within the course and scope of the prescriber’s professional practice and prescriptive authority; (7-1-18)

e. Pursuant to a valid prescriber-patient relationship, unless statutorily exempted; or (7-1-18)

f. In the form and including the elements specified in this Subchapter D. (7-1-18)

02. Antedating or Postdating. A prescription drug order is invalid if antedated or postdated. (7-1-18)

03. Tampering. A prescription drug order is invalid if, at the time of presentation, it shows evidence of alteration, erasure, or addition by any person other than the person who wrote it. (7-1-18)

04. Prescriber Self-Use. A prescription drug order written for a controlled substance is invalid if written for the prescriber’s own use. (7-1-18)

~~05. **Family Members.** A prescription drug order written for a prescriber's family member is invalid if inconsistent with the scope of practice and prescriptive authority of the prescriber's profession. (7-1-18)~~

065. Expiration. A prescription drug order is invalid after its expiration date as follows: (7-1-18)

a. A prescription drug order for a Schedule II controlled substance must not be filled or dispensed more than ninety (90) days after its date of issue. (7-1-18)

b. A prescription drug order for a controlled substance listed in Schedules III, IV or V must not be filled or refilled more than six (6) months after its date of issue. (7-1-18)

~~**e.** A prescription drug order for a non-controlled drug must not be filled or refilled more than fifteen (15) months after its date of issue, unless if extended in accordance with these rules. (7-1-18)~~

~~**076. Prescriber Change of Status** **Digital Image Prescriptions.** A prescription drug order is invalid after ninety (90) days from the date the pharmacist learns of a change in status that precludes a continued prescriber-patient relationship A digital image of a prescription drug order is invalid if it is for a controlled substance or if the patient intends to pay cash for the drug in whole. (7-1-18)()~~

(BREAK IN CONTINUITY OF SECTIONS)

302. PRESCRIPTION DRUG ORDER: MINIMUM REQUIREMENTS.

A prescription drug order must comply with applicable requirements of federal law and, except as differentiation is permitted for an institutional drug order, must include at least the following: (7-1-18)

01. Patient's Name. The patient's or authorized entity's name and: (7-1-18)

a. If for a controlled substance, the patient's full name and address; and (7-1-18)

b. If for an animal, the species. (7-1-18)

02. Date. The date issued. (7-1-18)

03. Drug Information. The drug name, strength, quantity and, if for a controlled substance, the dosage form. (7-1-18)

04. Directions. The directions for use. (7-1-18)

05. Prescriber Information. The name and, if for a controlled substance, the address and DEA registration number of the prescriber. (7-1-18)

06. Signature. ~~If paper, the pre-printed, stamped or hand-printed name and written~~ A signature sufficient to evidence a valid prescription of either the prescriber or, if statutorily allowed, a renewal of a previous prescription, the prescriber's agent's signature and, if electronic, when authorized by the prescriber's electronic signature. (7-1-18)()

07. Institutional Drug Order Exemptions. An institutional drug order may exempt the patient's address, the dosage form, quantity, prescriber's address, and prescriber's DEA registration number. (7-1-18)

~~**08. Exemptions for Non-Controlled Substances.** A prescriber may omit the required drug information and directions if the prescriber makes a clear indication that the pharmacist is to finalize the patient's drug therapy plan. ()~~

303. FILLING PRESCRIPTION DRUG ORDERS: PRACTICE LIMITATIONS.

01. Drug Product Selection. Drug product selection is allowed only between therapeutic equivalent drugs. If a prescriber orders by any means that a brand name drug must be dispensed, then no drug product selection is permitted. (7-1-18)

02. Partial Filling. A prescription drug order may be partially filled within the limits of federal law. The total quantity dispensed in partial fillings must not exceed the total quantity prescribed. (7-1-18)

03. Refill Authorization. A prescription drug order may be refilled when permitted by state and federal law and only as specifically authorized by the prescriber, except ~~as follows:~~ (7-1-18)

~~a. A pharmacist acting in good faith and exercising reasonable care may dispense or refill a prescription drug that is not a controlled substance up to the total amount authorized by the prescriber including refills. (7-1-18)~~

~~b. that~~ **a** pharmacist may refill a prescription for a non-controlled drug one (1) time in a six (6)-month period when the prescriber is not available for authorization. In such cases, a pharmacist may dispense a refill up to the quantity on the most recent fill or a thirty (30)-day supply, whichever is less. (7-1-18)()

304. FILLING PRESCRIPTION DRUG ORDERS: ADAPTATION.

Upon patient consent, a pharmacist acting in good faith and exercising reasonable care may adapt drugs as specified in this rule, provided that the drug is not for a controlled substance, compounded drug, or biological product, and provided that the prescriber has not indicated by any means necessary that adaptation is not permitted. (7-1-18)

01. Change Quantity. A pharmacist may change the quantity of medication prescribed if: (7-1-18)

a. The prescribed quantity or package size is not commercially available; ~~or~~ (7-1-18)()

b. The change in quantity is related to a change in dosage form; ~~i~~ (7-1-18)()

~~c. The change is intended to dispense up to the total amount authorized by the prescriber including refills; or ()~~

~~d. The change extends a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program. ()~~

02. Change Dosage Form. A pharmacist may change the dosage form of the prescription if it is in the best interest of patient care, so long as the prescriber's directions are also modified to equate to an equivalent amount of drug dispensed as prescribed. (7-1-18)

03. Complete Missing Information. A pharmacist may complete missing information on a prescription if there is sufficient evidence to support the change. (7-1-18)

~~04. Medication Synchronization. A pharmacist may extend a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program. (7-1-18)~~

05. Documentation. A pharmacist who adapts a prescription in accordance with these rules must document the adaptation in the patient's record. (7-1-18)

305. FILLING PRESCRIPTION DRUG ORDERS: DRUG PRODUCT SUBSTITUTION.

Drug product substitutions are allowed only as follows: (7-1-18)

01. Hospital. Pursuant to a formulary or drug list prepared by the pharmacy and therapeutics committee of a hospital; (7-1-18)

02. Skilled Nursing Institutional Facility. At the direction of the quality assessment and assurance committee of an ~~skilled nursing~~ **institutional** facility; (7-1-18)()

03. Drug Shortage. Upon a drug shortage, a pharmacist may exercise professional judgment, without contacting the prescriber, and may substitute an alternative dose of a prescribed drug, so long as the prescriber's directions are also modified, to equate to an equivalent amount of drug dispensed as prescribed; or (7-1-18)

04. Biosimilars. A pharmacist may substitute an interchangeable biosimilar product for a prescribed biological product if: (7-1-18)

a. The biosimilar has been determined by the FDA to be interchangeable and published in the Purple Book; (7-1-18)

b. The prescriber does not indicate by any means that the prescribed biological product must be dispensed; and (7-1-18)

c. The name of the drug and the manufacturer or the NDC number is documented in the patient medical record. (7-1-18)

05. Prescriber-Authorized Substitution. A prescriber may authorize a pharmacist to substitute a drug with another drug in the same therapeutic class provided the following conditions are met: ()

a. The prescriber has clearly indicated that substitution is permissible by indicating "therapeutic substitution allowed" or a similar designation; ()

b. The substitution is intended to ensure formulary compliance with the patient's health insurance plan, or, in the case of a patient without insurance, to lower the cost to the patient while maintaining safety; ()

c. The patient opts-in to the substitution, and the pharmacist clearly informs the patient of the differences in the drug products and specifies that the patient may refuse the substitution; and ()

d. If a substitution is made: ()

i. The prescriber's directions are also modified to equate to an equivalent amount of drug dispensed as is prescribed; and ()

ii. The pharmacist notifies the patient's original prescriber of the substitution within five (5) business days of dispensing the prescription. ()

e. Prescriber-authorized substitution does not apply to biological products, narrow therapeutic index drugs, or psychotropic drugs. ()

(BREAK IN CONTINUITY OF SECTIONS)

313. PRESCRIPTION DELIVERY: RESTRICTIONS.

01. Acceptable Delivery. A drug outlet that dispenses drugs to patients in Idaho may deliver filled prescriptions ~~to the following~~ in accordance with federal law, as long as appropriate measures are taken to ensure product integrity: ~~and safety.~~ (7-1-18)()

~~**a.** To the patient or the patient's residence, the institutional facility in which the patient is convalescing, the correctional facility in which a patient is housed;~~ (7-1-18)

~~**b.** To the patient's licensed or registered healthcare provider, as follows:~~ (7-1-18)

~~**i.** If the drug is not a controlled substance; or~~ (7-1-18)

~~ii. If the drug is a controlled substance that is intended for direct administration by the prescriber or prescriber's delegate. (7-1-18)~~

~~e. To another licensed drug outlet. (7-1-18)~~

02. Pick-up or Return by Authorized Personnel. Filled prescriptions may be picked up for or returned from delivery by authorized personnel when the drug outlet is closed for business if the prescriptions are placed in a secured delivery area outside of the restricted drug storage area that is equipped with adequate security, including an alarm or comparable monitoring system, to prevent unauthorized entry, theft and diversion ~~under policies and procedures developed by the PIC. (7-1-18)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

SUBCHAPTER E – DRUG OUTLET RECORDKEEPING AND REPORTING REQUIREMENTS
(Rules 400 through 499 - Drug Outlet Recordkeeping and Reporting Requirements)

400. RECORDKEEPING: MAINTENANCE AND INVENTORY REQUIREMENTS.

01. Records Maintenance and Retention Requirement. Unless an alternative standard is stated for a specified record type, form, or format, records required to evidence compliance with statutes or rules enforced by the Board must be maintained and retained in a readily retrievable form and location for at least three (3) years from the date of the transaction. (7-1-18)

02. Prescription Retention. A prescription drug order must be retained in a readily retrievable manner by each drug outlet and maintained as follows: (7-1-18)

a. Schedule II Prescriptions. Paper prescription drug orders for Schedule II controlled substances must be maintained at the registered location in a separate prescription file. (7-1-18)

b. Schedule III through V Prescriptions. Paper prescription drug orders for Schedules III, IV and V controlled substances must be maintained at the registered location either in a separate prescription file for Schedules III, IV and V controlled substances only or in a readily retrievable manner from other prescription records as required by federal law. (7-1-18)

c. Electronic Prescriptions. Electronic prescription drug orders for controlled substances must be maintained in a system that meets the requirements of federal law. The records may be maintained at another location if readily retrievable at the registered location. The electronic application must be capable of printing or otherwise converting the records into a readily understandable format at the registered location and must allow the records to be sortable by prescriber name, patient name, drug dispensed, and date filled. (7-1-18)

03. Inventory Records. Each drug outlet must maintain a current, complete and accurate record of each controlled substance manufactured, imported, received, ordered, sold, delivered, exported, dispensed or otherwise disposed of by the registrant. Drug outlets must maintain inventories and records in accordance with federal law. An inventory must be conducted as follows: (7-1-18)

a. Annual Inventory of Stocks of Controlled Substances. Each registrant must conduct an inventory of controlled substances on hand annually at each registered location no later than seven (7) days after the date of the most recent inventory in a form and manner that satisfies the inventory requirements of federal law. A separate controlled substances inventory must be taken and retained at each DEA-registered location. (7-1-18)

~~**b.** Inventory on PIC Change. A complete controlled substance inventory must be conducted by the incoming PIC or his delegate on or by the first day of employment of the incoming PIC. (7-1-18)~~

eb. Inventory on Addition to Schedule of Controlled Substances. On the effective date of an addition of

a substance to a schedule of controlled substances, each registrant that possesses that substance must take an inventory of the substance on hand, and thereafter, include the substance in each inventory. (7-1-18)

~~0c.~~ **Drugs Stored Outside a Drug Outlet.** In addition to the annual inventory requirements, drugs stored outside a drug outlet in accordance with these rules must be regularly inventoried and inspected to ensure that they are properly stored, secured, and accounted for. (7-1-18)

~~0d.~~ **Closing of Pharmacy.** A closing inventory must be conducted and retained. (7-1-18)

04. Rebuttal Presumption of Violation. Evidence of an amount of a controlled substance that differs from the amount reflected on a record or inventory required by state or federal law creates a rebuttable presumption that the registrant has failed to keep records or maintain inventories in conformance with the recordkeeping and inventory requirements of state and federal law. (7-1-18)

05. Drug Distributor Records. Wholesalers and other entities engaged in wholesale drug distribution must maintain inventories and records or transactions pertaining to the receipt and distribution or other disposition of drugs in accordance with federal law. The records must include at least: ()

a. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped; ()

b. The identity and quantity of the drugs received and distributed or disposed of; ()

c. The dates of receipt and distribution or other disposition of the drugs; and ()

d. Controlled substance distribution invoices, in the form and including the requirements of federal law. ()

~~056.~~ **Central Records Storage.** Records may be retained at a central location in compliance with federal law. (7-1-18)

067. Electronic Records Storage. Any record required to be kept under this section may be electronically stored and maintained if they remain legible and are in a readily retrievable format, and if federal law does not require them to be kept in a hard copy format. (7-1-18)

(BREAK IN CONTINUITY OF SECTIONS)

402. REPORTING REQUIREMENTS.

~~01. PIC Change.~~ Both an outgoing and incoming PIC must report to the Board a change in a PIC designation within ten (10) days of the change. (7-1-18)

021. Theft or Loss of Controlled Substances. A registrant must report to the Board on the same day reported to the DEA a theft or loss of a controlled substance that includes the information required by federal law. (7-1-18)

~~032.~~ **Individual Information Changes.** Changes in employment or changes to information provided on or with the initial or renewal application must be reported to the Board within ten (10) days of the change. (7-1-18)

043. Reporting Adulteration or Misappropriation. A licensee or registrant must report to the Board any adulteration or misappropriation of a controlled drug in accordance with Section 37-117A, Idaho Code. (7-1-18)

04. Drug Distributor Monthly Reports. An authorized distributor must report specified data on drugs distributed at least monthly to the Board in a form and manner prescribed by the Board. ()

IDAPA 27 – BOARD OF PHARMACY

27.01.04 – RULES GOVERNING PHARMACIST PRESCRIPTIVE AUTHORITY

DOCKET NO. 27-0104-1802

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no major changes to the pending rule and it is being adopted with one minor technical change to the section heading of Rule 026.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 402 through 404](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alex Adams, Executive Director, at (208) 334-2356.

Dated this 25th day of October, 2018.

Alex J. Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-1717, Idaho Code.

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

PUBLIC HEARING
Wednesday, October 24, 2018 – 1:00 p.m. (MDT)

Idaho State Capitol Building
Room WW53
700 W. Jefferson Street
Boise, ID 83702

Written comments received by October 15, 2018, will be included in the Board's distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

The hearing site 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:

This docket further implements House Bill 191, which passed the Idaho Legislature in 2017. In addition, during the 2018 rules review, members of the legislature suggested an edit to one of the rules as drafted, and this change was made via temporary rule and published in the June 2018 Administrative Bulletin. This docket would make the temporary rule permanent.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 160-161](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at 208-334-2356.

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 24, 2018, as described above.

Dated this 30th day of August 2018.

LINK: LSO Rules Analysis Memo

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0104-1802

021. PHARMACIST PRESCRIBING FOR MINOR CONDITIONS.

A pharmacist may prescribe any drug approved by the FDA, unless otherwise specified, that is indicated for the following conditions: (7-1-18)()

01. Lice; (7-1-18)
02. Cold Sores; (7-1-18)
03. Motion Sickness Prevention; *and* (7-1-18)()
04. Uncomplicated Urinary Tract Infections; (7-1-18)()
05. Allergic Rhinitis. Prescribing is limited to intranasal drugs only; ()
06. Mild Acne. Prescribing is limited to topical drugs only; and ()
07. Mild Cough. Only benzonatate may be prescribed for cough suppression. ()

(BREAK IN CONTINUITY OF SECTIONS)

024. PHARMACIST PRESCRIBING FOR CLINICAL GAPS IN CARE.

A pharmacist may prescribe any drug approved by the FDA for the purposes of closing a gap in clinical guidelines as follows: (7-1-18)

01. **Statins**. Statins, for patients who have *a current prescription for a drug for* been diagnosed with diabetes; and (7-1-18)()
02. **Short-Acting Beta Agonists**. Short-acting beta agonists (SABA), for patients with asthma who have had a prior prescription for a SABA, and who have a current prescription for a long-term asthma control medication. (7-1-18)

(BREAK IN CONTINUITY OF SECTIONS)

026. PHARMACIST PRESCRIBING TO SUPPLEMENT AN INFUSION ORDER.

A pharmacist may prescribe any of the following FDA approved drugs or devices to supplement a valid prescription drug order or institutional drug order for drugs intended to be administered to a patient via infusion; (7-1-18)

01. **Flush.** Heparin, in concentrations of one hundred (100) units per milliliter or less, and saline; (7-1-18)
02. **Devices.** Infusion pumps and other rate control devices; (7-1-18)
03. **Supplies.** Tubing, filters, catheters, intravenous (IV) start kits, central line dressing kits, and injection caps; ~~and~~ ~~(7-1-18)~~ ()
04. **Local Anesthetics for IV Port Access;** ~~(7-1-18)~~ ()
05. **Catheter Occlusion.** Agents for catheter occlusion; and ()
06. **Additional Supplemental Drugs.** Methylprednisolone, hydrocortisone, diphenhydramine, epinephrine, and normal saline. ()

IDAPA 27 – BOARD OF PHARMACY

27.01.05 – RULES GOVERNING DRUG COMPOUNDING

DOCKET NO. 27-0105-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

One change has been made to the original proposed rule as published. Specifically, the Board created an exemption from the sterile product preparation rule to conform to recent updates in national compounding standards.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 405 through 408](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alex Adams, Executive Director, at (208) 334-2356.

Dated this 25th day of October, 2018.

Alex J. Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-1717, Idaho Code.

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

PUBLIC HEARING
Wednesday, October 24, 2018 – 1:00 p.m. (MDT)

Idaho State Capitol Building
Room WW53
700 W. Jefferson Street
Boise, ID 83702

Written comments received by October 15, 2018, will be included in the Board's distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

The hearing site 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:

This docket makes several minor edits to the rules governing drug compounding to better align with federal law and current practice.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 162-163](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at 208-334-2356.

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 24, 2018, as described above.

Dated this 30th day of August 2018.

[LINK: LSO Rules Analysis Memo](#)

Italicized red text that is *double underscored* indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0105-1801

101. STERILE PRODUCT PREPARATION.

01. Application. In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products, these rules apply to all persons, including any business entity, engaged in the practice of sterile compounding and sterile prepackaging in or into Idaho. (7-1-18)

02. Dosage Forms Requiring Sterility. The sterility of compounded biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals must be maintained or the compounded drug product must be sterilized when prepared in the following dosage forms: (7-1-18)

- a. Aqueous bronchial and nasal inhalations, except sprays and irrigations intended to treat bronchial nasal mucosa only; (7-1-18)()
- b. Baths and soaks for live organs and tissues; (7-1-18)
- c. Injections (for example, colloidal dispersions, emulsions, solutions, suspensions); (7-1-18)
- d. Irrigations for wounds and body cavities; (7-1-18)
- e. Ophthalmic drops and ointments; and (7-1-18)
- f. Tissue implants. (7-1-18)

03. Compounder Responsibilities. Compounders and sterile prepackagers are responsible for ensuring that sterile products are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed, as well as prepared in a manner that maintains sterility and minimizes the introduction of particulate matter; (7-1-18)

- a. Unless following manufacturer's guidelines or another reliable literature source, opened or partially used packages of ingredients for subsequent use must be properly stored as follows; (7-1-18)
 - i. Opened or entered (such as needle-punctured) single-dose containers, such as bags, bottles, syringes, and vials of sterile products and compounded sterile products shall be used within one (1) hour if opened in non-sterile conditions, and any remaining contents must be discarded; (7-1-18)
 - ii. Single-dose vials needle-punctured in a sterile environment may be used up to six (6) hours after initial needle puncture; (7-1-18)
 - iii. Opened single-dose ampules shall not be stored for any time period; and (7-1-18)

iv. Multiple-dose containers (for example, vials) that are formulated for removal of portions on multiple occasions because they contain antimicrobial preservatives, may be used for up to twenty-eight (28) days after initial opening or entering, unless otherwise specified by the manufacturer; (7-1-18)

b. Water-containing compounded sterile products that are non-sterile during any phase of the compounding procedure must be sterilized within six (6) hours after completing the preparation in order to minimize the generation of bacterial endotoxins; (7-1-18)

c. Food, drinks, and materials exposed in patient care and treatment areas shall not enter ante-areas, buffer areas, or segregated areas where components and ingredients of sterile products are prepared. (7-1-18)

04. Environmental Controls. Except when prepared for immediate administration, the environment for the preparation of sterile products in a drug outlet must be in an isolated area, designed to avoid unnecessary traffic and airflow disturbances, and equipped to accommodate aseptic techniques and conditions. (7-1-18)

a. Hoods and aseptic environmental control devices must be certified for operational efficiency as often as recommended by the manufacturer or at least every six (6) months or if relocated. (7-1-18)

b. Filters must be inspected and replaced in accordance with the manufacturer's recommendations. (7-1-18)

05. Sterile Product Preparation Equipment. A drug outlet in which sterile products are prepared must be equipped with at least the following: (7-1-18)

a. Protective apparel including gowns, masks, and sterile (or the ability to sterilize) non-vinyl gloves, unless the PIC can provide aseptic isolator manufacturer's written documentation that any component of garbing is not required; (7-1-18)

b. A sink ~~with hot and cold water in close proximity to the hood;~~ (7-1-18)()

c. A refrigerator for proper storage of additives and finished sterile products prior to delivery when necessary; and (7-1-18)

d. An appropriate laminar airflow hood or other aseptic environmental control device such as a laminar flow biological safety cabinet, or a comparable compounding area when authorized by USP 797. (7-1-18)()

06. Documentation Requirements. The following documentation must also be maintained by a drug outlet in which sterile products are prepared: (7-1-18)

a. Justification of beyond use dates assigned, pursuant to direct testing or extrapolation from reliable literature sources; (7-1-18)

b. Training records, evidencing that personnel are trained on a routine basis and are adequately skilled, educated, and instructed; (7-1-18)

c. Audits appropriate for the risk of contamination for the particular sterile product including: (7-1-18)

i. Visual inspection to ensure the absence of particulate matter in solutions, the absence of leakage from bags and vials, and the accuracy of labeling with each dispensing; (7-1-18)

ii. Periodic hand hygiene and garbing competency; (7-1-18)

iii. Media-fill test procedures (or equivalent), aseptic technique, and practice related competency evaluation at least annually by each compounder or sterile prepackager; (7-1-18)

iv. Environmental sampling testing at least upon registration of a new drug outlet, following the servicing or re-certification of facilities and equipment, or in response to identified problems with end products, staff techniques or patient-related infections, or every six (6) months, including: (7-1-18)

- (1) Total particle counts; (7-1-18)
- (2) Viable air sampling; (7-1-18)
- (3) ~~Gloved fingertip sampling;~~ ~~(7-1-18)~~
- ~~(4)~~ Surface sampling; (7-1-18)

v. Gloved fingertip sampling testing at least annually for personnel who compound low- and medium-risk level compounded sterile preparations and every six (6) months for personnel who compound high-risk level compounded sterile preparations. ()

vi. Sterility testing of high risk batches of more than twenty-five (25) identical packages (ampules, bags, vials, etc.) before dispensing or distributing; (7-1-18)

- d. Temperature, logged daily; (7-1-18)
- e. Beyond use date and accuracy testing, when appropriate; and (7-1-18)

f. Measuring, mixing, sterilizing, and purification equipment inspection, monitoring, cleaning, and maintenance to ensure accuracy and effectiveness for their intended use. (7-1-18)

07. Policies and Procedures. Policies and procedures appropriate to the practice setting must be adopted by a drug outlet preparing sterile pharmaceutical products and must include a continuous quality improvement program for monitoring personnel qualifications and training in sterile technique, including: (7-1-18)

- a. Antiseptic hand cleansing; (7-1-18)
- b. Disinfection of non-sterile compounding surfaces; (7-1-18)
- c. Selecting and appropriately donning protective garb; (7-1-18)
- d. Maintaining or achieving sterility of sterile products while maintaining the labeled strength of active ingredients; (7-1-18)
- e. Manipulating sterile products aseptically, including mixing, diluting, purifying, and sterilizing in the proper sequence; (7-1-18)
- f. Choosing the sterilization method, pursuant to the risk of a contamination of particular compounded sterile product; and (7-1-18)
- g. Inspecting for quality standards before dispensing or distributing. (7-1-18)

IDAPA 27 – BOARD OF PHARMACY

27.01.06 – RULES GOVERNING DME, MANUFACTURING, AND DISTRIBUTION

DOCKET NO. 27-0106-1801 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 409 through 410](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alex Adams, Executive Director, at (208) 334-2356.

Dated this 25th day of October, 2018.

Alex J. Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 Section 54-1717, Idaho Code.

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

PUBLIC HEARING
Wednesday, October 24, 2018 – 1:00 p.m. (MDT)

Idaho State Capitol Building
Room WW53
700 W. Jefferson Street
Boise, ID 83702

Written comments received by October 15, 2018, will be included in the Board's distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

The hearing site 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 Board of Pharmacy intends to eliminate this chapter as described more fully in Rule Docket No. 27-0101-1801.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 164-165](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at 208-334-2356.

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 24, 2018 as described above.

Dated this 30th day of August 2018.

[LINK: LSO Rules Analysis Memo](#)

IDAPA 27.01.06 IS BEING REPEALED IN ITS ENTIRETY