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**IDAPA 16
TITLE 05
CHAPTER 05**

16.05.05 - CRIMINAL HISTORY AND BACKGROUND CHECKS IN LONG TERM CARE SETTINGS

000. LEGAL AUTHORITY.

The Idaho Legislature under Section 56-1004A, Idaho Code, has granted the Department of Health and Welfare the power and authority to participate in a federal pilot project to conduct criminal history and background checks for individuals in long term care settings that have direct patient access. The provisions of this rule will be effective from October 1, 2005 through September 30, 2007, or until federal funding is no longer available. (4-11-06)

001. TITLE, SCOPE AND POLICY.

01. Title. The title of this chapter is IDAPA 16.05.05, "Criminal History and Background Checks in Long Term Care Settings." (4-11-06)

02. Scope. These rules are established to assist in the protection of children and vulnerable adults by requiring criminal history and background checks of individuals who may have access to or who provide care or services to those populations in long term care settings. (4-11-06)

03. Policy. It is the Department's policy when doing criminal history and background checks based on the fingerprints of the individual and a self-declaration application, to use information obtained from the Federal Bureau of Investigation, the National Criminal History Background Check System, Bureau of Criminal Identification, the statewide Child Protection Central Registry, Adult Protection findings, Sexual Offender Registries, Idaho Department of Transportation Driving Records, the Nurse Aide Registry, findings from other states, the Medicaid/Medicare exclusion list, or other state or government sources. (4-11-06)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations associated with this chapter of rules. (4-11-06)

003. ADMINISTRATIVE APPEALS.

Appeals and proceedings are governed by the Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-11-06)

004. INCORPORATION BY REFERENCE.

The following are incorporated by reference into this chapter of rules. (4-11-06)

01. IDAPA 16.05.06. IDAPA 16.05.06 "Rules Governing Mandatory Criminal History Checks." This chapter of rule may be found at <http://www2.state.id.us/adm/adminrules/rules/idapa16/0506.pdf>. (4-11-06)

02. Public Law 108-173. Public Law 108-173, Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. This law may be found on the CMS website at "http://www.cms.hhs.gov/medicaid/survey-cert/307.pdf". (4-11-06)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- 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. (4-11-06)

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. (4-11-06)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-11-06)

04. Telephone. (208) 334-5500. (4-11-06)

05. Internet Website Address. Department Internet address is: <http://www.healthandwelfare.idaho.gov>. (4-11-06)

06. Criminal History Unit. The Criminal History Unit may be contacted as listed below: (4-11-06)

a. Address: 823 Park Center Way, Nampa, ID 83651; (4-11-06)

b. Phone: (208) 442-8353; Toll Free: 1-800-340-1246; FAX: (208) 442-8352; and (4-11-06)

c. Website: www.chu.dhw.idaho.gov. (4-11-06)

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. (4-11-06)

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Public records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state or federal law. (4-11-06)

007. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

01. Criminal History and Background Check. The criminal history and background check is a fingerprint based check as defined in IDAPA 16.05.06. "Rules Governing Mandatory Criminal History Checks." (4-11-06)

02. Department. The Idaho Department of Health and Welfare. (4-11-06)

03. Direct Patient Access Individual. An individual who has direct access to a patient or resident in a long term care setting through employment or contract. (4-11-06)

04. Federal Pilot Project. The federal pilot project means the activities authorized by Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Public Law 108-173, which provides grant funding to Idaho to conduct background checks on employees and contractors who have direct patient access to individuals in long term care settings. (4-11-06)

05. Long Term Care Settings. For the purpose of these rules and the federal pilot project, long term care settings include: (4-11-06)

a. Home Health Agencies; (4-11-06)

b. Hospices; (4-11-06)

c. Hospitals with swing beds; (4-11-06)

d. Intermediate Care Facilities for the Mentally Retarded (ICFs/MR); (4-11-06)

e. Nursing Facilities and Residential Care or Assisted Living Facilities, notwithstanding the exclusion of these facilities under IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," Subsection 015.02.a. Such exclusion will not apply as long as this chapter of rule is in effect. (4-11-06)

011. -- 049. (RESERVED).

050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.

Fees and costs for criminal history and background checks for direct patient access individuals participating in the federal pilot project are paid for by the federal grant as provided in Public Law 108-173, Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. (4-11-06)

051. -- 099. (RESERVED).

100. CRIMINAL HISTORY AND BACKGROUND CHECKS.

01. Direct Patient Access Individuals. Employees and contractors, having direct patient access to individuals in long term care settings, must have criminal history and background checks if they are hired or contracted with after October 1, 2005. (4-11-06)

02. Excluded Individuals. Volunteers and any individual who does not have a contract with the facility or provider and is exclusively providing services in a long term care setting through a private arrangement or contract, are not required to have a criminal history and background check under this chapter of rule. (4-11-06)

101. PROCEDURES FOR COMPLIANCE WITH MANDATORY CRIMINAL HISTORY AND BACKGROUND REQUIREMENTS.

Direct patient access individuals who are hired or contracted with on or after October 1, 2005, in long term care settings are required to follow procedures and be in compliance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." (4-11-06)

102. SELF DECLARATION AND FINGERPRINT REQUIREMENT.

A notarized self declaration and fingerprint card must be submitted to the Department for a criminal history and background check. (4-11-06)

01. Access to Patients or Residents. A direct patient access individual hired or contracted with to provide services must complete a self declaration and have the self declaration notarized before having access to patients. Once the self declaration is complete, a direct patient access individual may only have supervised access to patients or residents until the fingerprints are submitted to the Department. If a designated crime listed in IDAPA 16.05.06 "Rules Governing Mandatory Criminal History Checks," has been disclosed, the individual cannot have access to residents without a clearance by the Department. (4-11-06)

02. Submission of the Self Declaration and Fingerprints to the Department. (4-11-06)

a. The completed self declaration and fingerprint card must be submitted to the Department within twenty (20) days of the self declaration being notarized. (4-11-06)

b. The self declaration may be completed online and the fingerprints collected by the Department, or the self declaration may be signed, notarized and submitted to the Department with the ten (10) rolled fingerprint card. (4-11-06)

103. -- 999. (RESERVED).

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