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**IDAPA 16
TITLE 04
CHAPTER 17**

16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES

000. LEGAL AUTHORITY.

The Idaho Legislature, under the Developmental Disabilities Services and Facilities Act, Sections 39-4601 et seq., Idaho Code, has empowered the Board of Health and Welfare with broad authority to develop and coordinate services for persons with developmental disabilities, so that the needs of each such person can be met. The authority delegated includes the power to promulgate standards and rules. (3-20-04)

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-20-04)

02. Scope. These rules contain and establish standards and minimum requirements for residential habilitation agencies which provide services to persons with developmental disabilities under agreement and in connection with programs funded in any part by the Department of Health and Welfare. The provisions are intended to regulate agencies so that services to participants will optimize participant opportunities for independence and self-determination while assuring adequate supports, services, participant satisfaction and health and safety. As a component of the service delivery system in Idaho for persons with developmental disabilities, residential habilitation agencies will provide individualized services and supports encouraging participant choice, providing the greatest degree of independence possible, enhancing the quality of life, and maintaining community integration and participation. Services provided by such agencies are intended to be person-centered and participant-driven, and based on a person-centered plan to meet each participant's needs for self-sufficiency, medical care and personal development with goals that safely encourage each participant to become a productive member of the community in which he lives. Access to these services must be prior authorized in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515. (3-20-04)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. (3-20-04)

003. ADMINISTRATIVE APPEALS.

Contested case hearings must be governed according to the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-20-04)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this chapter of rules. (3-20-04)

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- 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. (3-20-04)

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. (3-20-04)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (3-20-04)

04. Telephone. The telephone number for of the Idaho Department of Health and Welfare is (208) 334-5500. (3-20-04)

05. Internet Website. The Department's internet website is <http://www.healthandwelfare.idaho.gov/>. (3-20-04)

006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records." (3-20-04)

007. -- 009. (RESERVED)

010. DEFINITIONS -- A THROUGH N.

For the purposes of these rules the following terms are used as defined below: (3-20-04)

01. Abuse. Any conduct of an employee or contractor of an agency as a result of which a person suffers verbal aggression or humiliation, skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death, or the circumstances indicate that such condition or death, may not be the product of accidental occurrence under Section 39-5202, Idaho Code. (3-29-12)

02. Administrator. The individual who is vested with primary responsibility for the direction and control of an agency, and who has power to legally bind the agency to contracts. (7-1-95)

03. Advocate. An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a person with developmental disabilities. A participant may act as his own advocate. (3-20-04)

04. Agency. Any business entity that directly provides residential habilitation services under a Home and Community Based Services waiver for adults with developmental disabilities. (3-29-12)

05. Appeal. A method to insure personal, civil and human rights by receiving, investigating, resolving, and documenting complaints related to the provision or termination of services of the residential habilitation services agency in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (7-1-95)

06. Audit. A methodical examination and review. (7-1-95)

07. Board. The Idaho Board of Health and Welfare. (3-29-12)

08. Business Entity. A public or private organization owned or operated by one (1) or more persons. (7-1-95)

09. Certificate. A permit to operate a residential habilitation agency. (7-1-95)

10. Certifying Agency. Units of the Department that conduct inspections and surveys and issue certificates based on the residential habilitation agency's compliance with this chapter. (3-29-12)

11. Chemical Restraint. The use of any medication that results or is intended to result in the modification of behavior without an accompanying behavior management program. (7-1-95)

12. Complaint Investigation. An investigation of an agency to determine the validity of an allegation against it and to identify solutions to resolve conflicts between the complainant and the agency. (7-1-95)

13. Department. The Idaho Department of Health and Welfare. (7-1-95)

14. Developmental Disability. A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: (3-20-04)

a. Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-95)

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-95)

c. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (7-1-95)

15. Deficiency. A determination of non-compliance with a specific rule or part of a rule. (7-1-95)

16. Director. Director of the Idaho Department of Health and Welfare or his designee. (7-1-95)

17. Exploitation. An action which may include the misuse of a vulnerable participant's funds, property, services, or resources by another person for profit or advantage. (3-20-04)

18. Full Certificate. A certificate issued by the Department to residential habilitation agencies complying with this chapter. (7-1-95)

19. Governing Authority. The designated person or persons who assume full responsibility for the conduct and operations of the residential habilitation services agency. (7-1-95)

20. Government Unit. The state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof. (7-1-95)

21. Guardian. A legally-appointed person who has the care of the person or property of another, under Section 66-404, Idaho Code. (3-20-04)

22. Implementation Plan. Written documentation of participants' needs, desires, goals and measurable objectives, including documentation of planning, ongoing evaluation, data-based progress and participant satisfaction of the program developed, implemented, and provided by the agency specific to the plan of service. (3-20-04)

011. DEFINITIONS -- M THROUGH Z.
For the purposes of these rules the following terms are used as defined below: (3-20-04)

01. Measurable Objective. A statement which specifically describes the skill to be acquired or service/support to be provided, includes quantifiable criteria for determining progress towards and attainment of the service, support or skill, and identifies a projected date of attainment. (7-1-95)

02. Mechanical Restraint. Any device that the participant cannot remove easily that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body or environment. Excluded are devices used to achieve proper body position, balance, or alignment. (3-20-04)

03. Medication. Any substance or drug used to treat a disease, condition or symptoms which may be taken orally, injected or used externally and is available through prescription or over-the-counter. (7-1-95)

04. Neglect. The negligent failure to provide those goods or services which are reasonably necessary to sustain the life and health of a person under Section 39-5302 (8), Idaho Code. (3-20-04)

05. Outcome-Based Review. An on-site review conducted by a trained reviewer authorized by the Department to determine participant satisfaction with the services received and improvement or impact upon his lifestyle following implementation of the plan of service. (3-20-04)

06. Participant. A person who receives health care services, is eligible for Medicaid, and who is receiving residential habilitation services. (3-20-04)

07. Person-Centered Planning Process. A meeting facilitated by the plan developer, comprised of

family and individuals significant to the participant who collaborate with the participant to develop the plan of service. (3-20-04)

08. Person-Centered Planning Team. The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (3-20-04)

09. Physical Restraint. Any manual method that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body. Excluded are physical guidance and prompting techniques of brief duration. (7-1-95)

10. Physician. Any person licensed as required by Title 54, Chapter 18, Idaho Code. (7-1-95)

11. Plan Developer. A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (3-20-04)

12. Plan Monitor. A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (3-20-04)

13. Plan of Service. An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (3-20-04)

14. Provider Status Review. The written documentation that identifies the participant's progress toward goals defined in the plan of service. (3-20-04)

15. Psychosocial Information. A combined summary of psychological and social histories of a participant designed to provide the person-centered planning team with an accurate reflection of the participant's current skills, abilities, and needs. (3-20-04)

16. Progress Note. A written notation, dated and signed by a member of the person-centered planning team or service provider, that documents facts about the participant's assessment, services provided, and the participant's response during a given period of time. (3-20-04)

17. Punishment. Any procedure in which an adverse consequence is presented that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a participant's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. (3-20-04)

18. QIDP. Qualified Intellectual Disabilities Professional as defined in 42 CFR 483.430. (7-1-95)

19. Residential Habilitation. Services consisting of an integrated array of individually-tailored services and supports furnished to an eligible participant which are designed to assist them to reside successfully in their own homes, with their families, or alternate family home. (3-20-04)

20. Reviewer. A person or other entity authorized by the Department to conduct reviews to determine compliance with the program requirements and participant satisfaction with the services. (3-20-04)

21. Rule. A requirement established by state, federal, or local government under the law and having the effect of law. (3-20-04)

22. Seclusionary Time Out. The contingent removal of an individual from a setting in which reinforcement is occurring that is designed to result in a decrease in the rate, intensity, duration or probability of the occurrence of a response, and entails the removal of the individual to an isolated setting. (7-1-95)

23. Substantial Compliance. An agency is in substantial compliance with these rules when there are no deficiencies which would endanger the health, safety or welfare of the participants. (3-20-04)

24. Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. (7-1-95)

25. Service Coordination. Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. See IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 720 through 779. (4-6-05)

26. Service Coordinator. An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 720 through 779. (4-6-05)

27. Services. Services paid for by the Department that enable the individual to reside safely and effectively in the community. (3-20-04)

28. Supports. Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (3-20-04)

29. Transition Plan. An interim plan developed by the residential habilitation agency defining activities to assist the participant to transition out of residential habilitation services from that agency. (3-20-04)

30. Waiver Services. Individually tailored services and supports as amended under Waiver Number 0076.90 (B) provided by an agency to an eligible recipient to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage choice, and to achieve and maintain community integration and participation. (7-1-95)

012. -- 099. (RESERVED)

100. CERTIFICATION -- GENERAL REQUIREMENTS.

01. Certificate Required. After, July 1, 1995, no person, firm, partnership, association or corporation within the state and no state or local public agency may operate, establish, manage, conduct or maintain a residential habilitation agency without first obtaining a valid certificate issued by the certifying agency of the Department. No agency may provide services without a current certificate. (3-29-12)

02. Application. An application for a certificate must be made to the Department upon forms provided by the Department and must contain the required information under Section 101 of these rules, including affirmative evidence of ability to comply with such reasonable standards and rules as are lawfully adopted by the Board. (3-29-12)

03. Denial. The certifying agency may deny any application when persuaded by evidence that such conditions exist as to endanger the health or safety of any participant. (3-20-04)

a. Additional causes for denial of certificate may include: (7-1-95)

i. The residential habilitation agency does not meet the needs of participants as written on the plans of service or Implementation Plans which will violate the participants' rights; or (3-20-04)

ii. The residential habilitation agency does not meet requirements for certification to the extent that it hinders its ability to provide quality services that comply with the rules for residential habilitation agencies; or (7-1-95)

iii. The residential habilitation agency has a history of repeat deficiencies. (7-1-95)

b. Before denial is final, the certifying agency must provide the opportunity for a hearing at which time the owner or sponsor of an agency may appear and show cause why the certificate should not be denied. A waiver of a specific rule or standard may be granted by the certifying agency in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any participant. The decision to grant a waiver must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the certifying agency. Contested case hearings, including denial and revocation, must be conducted under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-20-04)

04. Revocation. The certifying agency may revoke any certificate when persuaded by the evidence that such conditions exist which endanger the health, safety, or welfare of any participant under the responsibility of the agency, or that the agency is not in substantial compliance with these rules. Additional causes for revocations of a certificate may include: (3-20-04)

a. The agency has a history of repeat deficiencies; (3-29-12)

b. The agency has been denied or has had revoked any certificate to operate a health or residential habilitation agency or has been convicted of operating any residential habilitation agency without a certificate or has been enjoined from operating such agency within two (2) years from the date of application; (3-29-12)

c. The agency lacks personnel sufficient in number or qualifications by training, experience, or judgment, to properly provide services to the proposed or actual numbers, and abilities and disabilities of participants; (3-29-12)

d. The agency has been guilty of fraud or deceit or misrepresentation in the preparation of the application or other documents required by the certifying agency; (3-29-12)

i. Has been guilty of fraud or deceit or misrepresentation or dishonesty associated with the operation of a certified residential habilitation agency; (3-29-12)

ii. Has been guilty of negligence or abuse or neglect or assault or battery while associated with the provision of services in its operation; (3-29-12)

e. The agency refuses to allow inspection of all residential habilitation records; (3-29-12)

f. The agency is not in substantial compliance with the provisions for services of participants' personal, civil or human rights outlined in Subsections 402.01.a. through 402.01.g.; or (3-20-04)

g. When the Department finds the public health, safety, or welfare imperatively require emergency action, a certificate may be summarily suspended pending proceedings for revocation or other action. (7-1-95)

05. Conformity. Applicants for certification and certified residential habilitation agencies must conform to all applicable rules of the Department. (3-20-04)

06. Inspection of Residential Habilitation Records. The residential habilitation agency and all records required under these rules must be accessible at any reasonable time to authorized representatives of the Department for the purpose of inspection with or without prior notice. Refusal to allow such access must result in revocation of the residential habilitation agency's certificate. (3-20-04)

07. Agency Provider Training. The Department must assure that direct service providers of all residential habilitation service agencies receive ongoing training in the provision of services and supports to participants. (3-20-04)

101. CERTIFICATION - ISSUANCE OF CERTIFICATES.

The Department will conduct an initial survey upon receipt of a completed application. (3-29-12)

01. Initial Certificate. When the Department determines that all application requirements have been met, an initial certificate is issued for a period of up to six (6) months from the initiation of services. During this six (6) month period, the Department evaluates the agency's ongoing capability to provide services and to meet the standards of these rules. The Department will resurvey the agency prior to the end of the initial certification period. (3-29-12)

02. Renewal of Certificate. A certificate may be renewed by the Department when it determines the agency requesting recertification is in substantial compliance with the provisions of this chapter of rules. A certificate issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. (3-29-12)

03. Provisional Certificate. When a residential habilitation agency is found to be out of substantial compliance with these rules, but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance to a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If the Department determines the agency is in compliance, a certificate will be issued. If the agency is determined to be out of compliance, the certificate will be denied or revoked. (3-29-12)

04. Expiration of Certificate. An agency must request renewal of its certificate no less than ninety (90) days before the expiration of the certificate to ensure there is no lapse in certification. After initial certification the Department may issue a certificate that is in effect for up to three (3) years based upon an agency's substantial compliance with this chapter of rules. (3-29-12)

102. CERTIFICATE NOT TRANSFERABLE.

The certificate is issued only to the agency named in the application, only for the period specified, and only to the owners or operators as expressed on the application submitted to the Department. The certificate may not be transferred or assigned to any other person or entity. (3-29-12)

103. RETURN OF CERTIFICATE.

The certificate is the property of the state and must be returned to the state if it is revoked or suspended. (3-29-12)

104. CHANGE OF OWNERSHIP, ADMINISTRATOR OR LESSEE.

01. Notification to Department. Because certificates are not transferable from one (1) individual to another or from one (1) lessee to another or from one (1) location to another, when a change of ownership, lease or locations is contemplated, the agency must be recertified and implement the same procedure as an agency that has never been certified. When a change of a certified agency's ownership, administrator, lessee, title, or address occurs, the owner or designee must notify the Department in writing. (3-20-04)

02. New Application Required. A new application must be submitted in the instance of a change of ownership or lessee to the certifying agency at least sixty (60) days prior to the proposed date of change. (7-1-95)

03. Arms Length Agreement. Because of the inherently close relationship between the lessee and the lessor, an application for change of ownership of an agency that is being leased from a person who is in litigation for failure to meet certification standards or who has had his certificate revoked, must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. (3-20-04)

105. -- 199. (RESERVED)

200. QUALITY ASSURANCE OUTCOME REVIEW.

01. Responsibilities. The certifying agency must conduct an outcome-based review on each residential habilitation agency on a routine basis as specified in the service agreement. The outcome-based review must include at least the following: (3-20-04)

- a.** Review of participant participation and satisfaction in residential habilitation services and identification, planning, and delivery; and (3-20-04)
- b.** An overall policy and administrative review and, if necessary, a clinical record review; and (7-1-95)
- c.** Assessment of the extent to which the agency's services meet the needs of the participant as identified on the plan of service, and promote community integration and participation. (3-20-04)

201. ADMINISTRATION.

- 01. Scope.** Each residential habilitation agency must be organized and administered under one authority. If other than a single owner or partnership, the agency must have a governing board which assumes full legal responsibility for the overall conduct of the agency. (3-20-04)
- 02. Structure.** The administrative responsibilities of the agency must be documented by means of a current organizational chart. (3-20-04)
- 03. Responsibilities.** The governing authority must assume responsibility for: (3-20-04)
 - a.** Adopting appropriate organizational bylaws and policies and procedures (3-29-12)
 - b.** Appointing an administrator qualified to carry out the agency's overall responsibilities in relation to written policies and procedures and applicable state and federal laws. The administrator must participate in deliberation of policy decisions concerning all services; (3-29-12)
 - c.** Providing a continuing and annual program of overall agency evaluation; (3-29-12)
 - d.** Assuring that appropriate training, space requirements, support services, and equipment for residential habilitation agency staff are provided to carry out assigned responsibilities; and (3-29-12)
 - e.** Cooperating in participating in a system by which to coordinate with other service providers continuity of the delivery of residential habilitation services in the plan of service. (3-20-04)

202. ADMINISTRATOR.

An administrator is responsible and accountable for implementing the policies and procedures approved by the governing authority. (3-20-04)

- 01. Administrator Qualifications.** Each agency must have a designated administrator who: (3-20-04)
 - a.** Is at least twenty-one (21) years of age; (3-29-12)
 - b.** Has satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-20-04)
 - c.** Has a minimum of three (3) years of experience in service delivery to persons with developmental disabilities with at least one (1) year having been in an administrative role. (7-1-95)
- 02. Absences.** The administrator must designate, in writing, a qualified person to perform the functions of the administrator to act in his absence. (3-20-04)
- 03. Responsibilities.** The administrator, or his designee, must assume responsibility for: (3-20-04)
 - a.** Developing and implementing written administrative policies and procedures which comply with applicable rules; (3-29-12)
 - b.** Developing and implementing policies and procedures for agency staff and provider training,

- quality assurance, evaluation, and supervision; (3-29-12)
- c.** Conducting regular agency staff meetings to review program and general participant needs and plan appropriate strategies for meeting those needs; (3-29-12)
 - d.** Maintaining adequate financial accounting records according to government accepted accounting principles; (3-29-12)
 - e.** Making all records available to the Department for review or audit; (3-29-12)
 - f.** Developing and implementing a policy addressing safety measures to protect participants, and staff as mandated by state and federal rules; and (3-29-12)
 - g.** Ensuring that agency personnel, including those providing services under arrangement, practice within the bounds set forth by the applicable state licensure boards. (3-29-12)

203. STAFF RESIDENTIAL HABILITATION PROVIDER TRAINING.

Training must include orientation and ongoing training at a minimum as required under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Training is to be a part of the orientation training and is required initially prior to accepting participants. All required training must be completed within six (6) months of employment with a residential habilitation agency and documented in the employee residential habilitation provider record. The agency must ensure that all employees and contractors receive orientation training in the following areas: (3-29-12)

- 01. Rights.** Personal, civil, and human rights. (7-1-95)
- 02. Disabilities.** Developmental disabilities commensurate with the skills of participants served. (3-20-04)
- 03. Understanding of Participants' Needs.** A basic understanding of the needs, desires, goals and objectives of participants served. (3-20-04)
- 04. Supervision.** Appropriate methods of supervision. (7-1-95)
- 05. Review of Services.** A review of the specific services that the participant requires. (3-20-04)
- 06. First Aid and CPR.** First aid, CPR, and universal precautions. (7-1-95)

204. -- 299. (RESERVED)

300. POLICY AND PROCEDURE MANUAL.

A policy and procedure manual must be developed by the residential habilitation agency for effectively implementing its objectives. It must be approved by the governing authority. Policies and procedures must be reviewed annually and revised as necessary. The manual must, at a minimum, include policies and procedures reflecting the following:

- 01. Scope of Services and Area Served.** Scope of services offered and geographic area served. (7-1-95)
- 02. Acceptance Standards.** Standards for acceptance of participants. (3-20-04)
- 03. Records Standards.** Standards for clinical records maintained. (7-1-95)
- 04. Required Services.** Procedures that must be performed by each service. (7-1-95)
- 05. Participant Safety.** Participant safety assessment procedures. (3-20-04)
- 06. Emergency Care.** Emergency care measures and crisis and emergency planning. (7-1-95)

- 07. Administrative Records.** Administrative records to be maintained. (7-1-95)
- 08. Personnel.** Personnel qualifications, responsibilities, and job description. (7-1-95)
- 09. Participant Rights.** Personal, civil, and human rights and dissemination of participant rights policies. (3-20-04)
- 301. PERSONNEL.**
- 01. Policies.** The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees, subcontractors or agents. Written personnel policies must be on file and provided to employees which describe the employee's rights, responsibilities, and agency's expectations. (3-29-12)
- 02. Work Schedules.** Coverage is scheduled to assure compliance with the Individual Support and Implementation Plans and all work schedules must be kept in writing. The agency must specify provisions and procedures to assure back-up coverage for those work schedules. (3-20-04)
- 03. Personnel Records.** A record for each employee must be maintained from date of hire for not less than one (1) year after the employee is no longer employed by the agency, and must include at least the following: (3-29-12)
- a.** Name, current address and phone number of the employee; and (7-1-95)
 - b.** Social Security number; and (7-1-95)
 - c.** Education and experience; and (7-1-95)
 - d.** Other qualifications (if licensed in Idaho, the original license number and the date the current registration expires, or if certificated, a copy of the certificate); and (7-1-95)
 - e.** Date of employment; and (3-29-12)
 - f.** Position in the agency; and (7-1-95)
 - g.** Date of termination of employment and reason for termination, if applicable; and (3-29-12)
 - h.** Documentation of initial orientation and required training; and (7-1-95)
 - i.** Evidence of current CPR and First Aid certifications; and (7-1-95)
 - j.** Verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-20-04)
 - k.** Evidence that the employee has received a job description and understands his duties. (3-29-12)
- 302. SERVICE PROVISION PROCEDURES.**
- 01. Admission Procedures.** The following criteria must apply to all participants receiving services from a residential habilitation agency: (3-20-04)
- a.** Agreement to serve each participant must be based on a recommendation of a person-centered planning process conducted by the participant's person-centered planning team, including his service coordinator. (3-20-04)
 - b.** The agency must obtain authorization from the Department for reimbursement for each Medicaid-covered eligible waiver service prior to providing residential habilitation services in accordance with IDAPA

16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515 (3-20-04)

02. Implementation Plan. Each participant must have an implementation plan that includes goals and objectives specific to his plan of service residential habilitation program. (3-20-04)

03. Periodic Review. Review of services and participant satisfaction must be conducted at least quarterly or more often if required by the participant's condition or program. (3-20-04)

04. Medication Standards. The agency must maintain a policy describing the program's system for handling participant medications which is in compliance with the IDAPA 23.01.01, "Rules of the Board of Nursing." (3-20-04)

05. Provider Status Review. Residential Habilitation agencies must submit semiannual and annual status reviews reflecting the status of behavioral objectives or services identified on the plan of service to the plan monitor. Semiannual status reviews must remain in participant file and annual status reviews must be attached to annual plan of service. (3-20-04)

06. Termination Procedures. The agency must terminate residential habilitation services if, as a result of a person-centered planning process conducted by the person-centered planning team, it is demonstrated that the participant is no longer in need of or desires Residential Habilitation services. The agency must notify the client in writing that the termination of services will occur and must develop a transition plan for termination of those services. The participant will be entitled to appeal the termination. The agency may not terminate services when to do so would pose a threat of endangerment to the participant or others. (3-20-04)

303. -- 399. (RESERVED)

400. PARTICIPANT RECORDS.

01. Participant Records. Each agency must have and maintain a written policy outlining the required content of participant records, criteria for completeness, and methodology to be used to ensure current and accurate records. An individual record must be maintained for each participant and retained for a period of three (3) years following the participant's termination of services. All entries made into a participant record must be dated and signed in ink. (3-20-04)

02. Required Information. Records must include at least the following information: (3-20-04)

- a.** Name, address and current phone number of the participant. (3-20-04)
- b.** Social Security and Medicaid ID numbers. (7-1-95)
- c.** Gender and marital status. (3-20-04)
- d.** Date of birth. (7-1-95)
- e.** Names, addresses, and current phone numbers of family, advocates, friends, and persons to be contacted in case of an emergency. (3-20-04)
- f.** Physician, dentist, and other health care providers. (7-1-95)
- g.** A list of medications, diet, and all other treatments prescribed for the participant. (3-20-04)
- h.** Results of a history and physical when necessary. (7-1-95)
- i.** Results of an age appropriate functional assessment, and person centered plan. (7-1-95)
- j.** Psychosocial information. (7-1-95)

- k.** Habilitation program, including documentation of planning, continuous evaluation, and participant satisfaction with the program. (3-20-04)
- l.** Record of significant incidents, accidents, illnesses, and treatments. (7-1-95)
- m.** Daily medication log when applicable. (7-1-95)
- n.** Daily record of the date, time, duration, and type of service provided. (7-1-95)
- o.** The plan of service including implementation plans maintained by the agency, and data-based progress notes. (3-20-04)

401. (RESERVED)

402. PARTICIPANT RIGHTS.

01. Responsibilities. Each residential habilitation agency must develop and implement a written policy outlining the personal, civil, and human rights of all participants. The policy protects and promotes the rights of each participant and includes the following: (3-20-04)

- a.** Inform each participant, or legal guardian, of the participant's rights and the rules of the agency; (3-20-04)
- b.** Allow and encourage individual participants to exercise their rights as participants of the agency, and as citizens of the United States, including the right to file complaints, and the right to due process; (3-20-04)
- c.** Inform each participant, or legal guardian, of the services to be received, the expected benefits and attendant risks of receiving those services, and of the right to refuse services, and alternative forms of services available; (3-20-04)
- d.** Provide each participant with the opportunity for personal privacy and ensure privacy during provision of services; (3-20-04)
- e.** Ensure that participants are not compelled to perform services for the agency, its employees, or contractors and ensure that participants who do work for the agency, its employees, or contractors, are compensated for their efforts at prevailing wages and commensurate with their abilities; (3-29-12)
- f.** Ensure that participants have access to telephones, if living in a place other than their own home or the home of their family, with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their plans of service; and (3-20-04)
- g.** Ensure that participants have the opportunity to participate in social, religious, and community group activities. (3-20-04)

403. PARTICIPANT FINANCES.

When the residential habilitation agency or its employees or contractors are designated as the payee on behalf of the participants, the agency must establish and maintain an accounting system that: (3-29-12)

- 01. Participant's Personal Finance Records.** Assures a full and complete accounting of participants' personal funds entrusted to the agency, its employees, or contractors on behalf of participants. Records of financial transactions must be sufficient to allow a thorough audit of the participant's funds. (3-29-12)
- 02. No Commingling of Funds.** Precludes any commingling of participant funds with agency funds. (3-20-04)
- 03. Availability of Funds.** Ensures that the participant's financial records must be available on request to the participant, participant's legal guardian or advocate. (3-20-04)

404. COMMUNICATION WITH PARTICIPANTS, PARENTS, LEGAL GUARDIANS, AND OTHERS.
The residential habilitation agency must promote participation of participants, legal guardians, relatives and friends in the process of providing services to a participant unless their participation is unobtainable or inappropriate as prescribed by the plan of service; and (3-20-04)

01. Reciprocal Communication. Answer communications from participant's families and friends promptly and appropriately; and (3-20-04)

02. Promotion of Visits and Activities. Promote frequent and informal opportunities for visits, trips or vacations; and (7-1-95)

03. Notification of Guardian of Participant's Condition. Notify the participant's legal guardian within twenty-four (24) hours, if one exists, of any significant incidents, or changes in participant's condition including serious illness, accident, death, or abuse. (3-29-12)

405. TREATMENT OF PARTICIPANTS.
The residential habilitation agency must develop and implement written policies and procedures including definitions that prohibit mistreatment, neglect or abuse of the participant to include at least the following: (3-20-04)

01. Interventions. Positive behavior interventions must be used prior to and in conjunction with, the implementation of any restrictive intervention. (3-20-04)

02. No Abuse. Employees or contractors of the agency must not use physical, verbal, sexual, or psychological abuse or punishment. (3-29-12)

03. No Punishment. Employees or contractors of the agency must not withhold food or hydration that contributes to a nutritionally adequate diet. (3-29-12)

04. Reporting Violations. Any agency employee or contractor must report immediately report all allegations of mistreatment, abuse, neglect, injuries of unknown origin, or exploitation to the administrator and to adult protection workers and law enforcement officials, as required by law under Section 39-5202, Idaho Code, or to the Idaho Commission on Aging, IDAPA 15.01.03, "Rules Governing Ombudsman for the Elderly Program," or the designated state protection and advocacy system for persons with developmental disabilities when applicable. (3-29-12)

05. Providing Evidence of Violation. Agencies must provide evidence that all alleged violations are thoroughly investigated and must protect the participant from the possibility of abuse while the investigation is in progress. (3-20-04)

06. Reporting Results of Investigations. Results of all investigations must be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action must be taken. (3-20-04)

07. Proper Treatment of Participants. Participants must be treated with dignity and respect and their personal choices and preferences are respected and honored whenever possible and consistent with their well being and their plan of service. (3-20-04)

08. Use of Restraint on Participants. No restraints, other than physical restraint in an emergency, must be used on participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on participants: (3-20-04)

a. Chemical restraint. Employees or contractors of the agency must not use chemical restraint unless authorized by an attending physician. (3-29-12)

b. Mechanical restraint. (7-1-95)

- i. Mechanical restraint may be used for medical purposes when authorized by an attending physician. (7-1-95)
- ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the participant, his service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)
- c. Physical restraint. (7-1-95)
 - i. Physical restraint may be used in an isolated emergency to prevent injury to the participant or others and must be documented in the participant's record. (3-20-04)
 - ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the participant, his service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.0310, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)
- d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the participant, his service coordinator his team, and a QMRP or a behavior consultant/crisis management consultant as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)

406. -- 499. (RESERVED)

500. WAIVERS.

Under Section 39-2404, Idaho Code, waivers to these rules, may be granted by the Department as necessary provided that granting the waiver does not endanger the health or safety or rights of any participant. The decision to grant a waiver must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the Department. (3-20-04)

501. ENFORCEMENT PROCESS.

The Department may impose a remedy or remedies when it determines a residential habilitation agency is not in compliance with these rules. (3-29-12)

01. Determination of Remedy. In determining which remedy or remedies to impose, the Department will consider the residential habilitation agency's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, and the potential risk to participants. Subject to these considerations, the Department may impose any of the remedies in Subsection 501.02 of this rule, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. (3-29-12)

02. Enforcement Remedies. If the Department determines that a residential habilitation agency is out of compliance with these rules, it may impose any of the following remedies according to Section 501.01 of this rule. (3-29-12)

- a. Require the residential habilitation agency to submit a plan of correction that must be approved in writing by the Department; (3-29-12)
- b. Issue a provisional certificate with a specific date for correcting deficient practices; (3-29-12)
- c. Ban enrollment of all participants with specified diagnoses; (3-29-12)
- d. Ban any new enrollment of participants; (3-29-12)
- e. Revoke the residential habilitation agency's certificate; or (3-29-12)
- f. Summarily suspend the certificate and transfer participants. (3-29-12)

03. Immediate Jeopardy. If the Department finds a residential habilitation agency's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the residential habilitation agency's certificate. (3-29-12)

04. No Immediate Jeopardy. If the Department finds that the residential habilitation agency's deficiency or deficiencies do not immediately jeopardize participant health or safety, the Department may impose one (1) or more of the remedies specified in Subsections 501.02.a. through 501.02.e. of this rule. (3-29-12)

05. Repeat Deficiencies. If the Department finds a repeat deficiency in a residential habilitation agency, it may impose any of the remedies listed in Subsection 501.02 of this rule as warranted. The Department may monitor the residential habilitation agency on an "as needed" basis, until the agency has demonstrated to the Department's satisfaction that it is in compliance with requirements governing residential habilitation agencies and that it is likely to remain in compliance. (3-29-12)

06. Failure to Comply. The Department may impose one (1) or more of the remedies specified in Subsection 501.02 of this rule if: (3-29-12)

a. The residential habilitation agency has not complied with any requirement in these rules within three (3) months after the date it was notified of its failure to comply with such requirement; or (3-29-12)

b. The residential habilitation agency has failed to correct the deficiencies stated in the agency's accepted plan of correction and as verified by the Department, via resurveys. (3-29-12)

502. REVOCATION OF CERTIFICATE.

01. Revocation of the Residential Habilitation Agency's Certificate. The Department may revoke a residential habilitation agency's certificate when persuaded by the preponderance of the evidence that the agency is not in substantial compliance with the requirements in this chapter of rules. (3-29-12)

02. Causes for Revocation of the Certificate. The Department may revoke any residential habilitation agency's certificate for any of the following causes: (3-29-12)

a. The certificate holder has willfully misrepresented or omitted information on the application for certification or other documents pertinent to obtaining a certificate; (3-29-12)

b. The agency is not in substantial compliance with these rules; (3-29-12)

c. When persuaded by preponderance of the evidence that conditions exist in the agency that endanger the health or safety of any participant; (3-29-12)

d. Any act adversely affecting the welfare of participants is being permitted, performed, or aided and abetted by the person or persons supervising the provision of services in the agency. Such acts include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; (3-29-12)

e. The provider has demonstrated or exhibited a lack of sound judgment that jeopardizes the health, safety, or well-being of participants; (3-29-12)

f. The agency has failed to comply with any of the conditions of a provisional certificate; (3-29-12)

g. The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant; (3-29-12)

h. An accumulation of minor deficiencies that, when considered as a whole, indicate the agency is not in substantial compliance with these rules; (3-29-12)

i. Repeat deficiencies by the agency of any requirement of these rules or of the Idaho Code;

(3-29-12)

j. The agency lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of participants served at the agency; (3-29-12)

k. The agency is not in substantial compliance with the provisions for services required in these rules or with the participants' rights under Section 402 of these rules; (3-29-12)

l. The certificate holder refuses to allow the Department or protection and advocacy agencies full access to the agency environment, agency records, or the participants. (3-29-12)

503. NOTICE OF ENFORCEMENT REMEDY.

The Department will notify the following of the imposition of any enforcement remedy on a residential habilitation agency: (3-29-12)

01. Notice to the Residential Habilitation Agency. The Department will notify the residential habilitation agency in writing, transmitted in a manner that will reasonably ensure timely receipt. (3-29-12)

02. Notice to Public. The Department will notify the public by sending the residential habilitation agency printed notices to post. The residential habilitation agency must post all the notices on their premises in plain sight in public areas where they will readily be seen by participants and their representatives, including exits and common areas. The notices must remain in place until all enforcement remedies have been officially removed by the Department. (3-29-12)

03. Notice to the Professional Licensing Boards. The Department will notify professional licensing boards, as appropriate. (3-29-12)

504. -- 509. (RESERVED)

510. EMERGENCY POWERS OF THE DIRECTOR.

In the event of an emergency endangering the life or safety of a participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director must provide an opportunity for a hearing. (3-29-12)

511. INJUNCTION TO PREVENT OPERATION WITHOUT CERTIFICATE.

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 injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a certificate required under this chapter. (3-29-12)

512. -- 999. (RESERVED)

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