

IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rulemaking activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. The March 2000 Bulletin is cited as Volume 00-3.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been adopted and approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are **not** printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rulemaking**, printed in each Bulletin.*

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings consist of all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the rulemaking to the temporary and/or proposed rule stage.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:

- a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.

TEMPORARY RULEMAKING

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.

A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

In cases where the text of the temporary rule is the same as that of the proposed rule, the rulemaking can be done concurrently as a temporary/proposed rule. State law requires that the text of a proposed or temporary rule be published in the Administrative Bulletin. Combining the rulemaking allows for a single publication of the text.

An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:

- a) the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective; and*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.

FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, Ricks College Library, and Northwest Nazarene College Library.

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

The Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

The Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

Individual Rule Chapters and *Individual Rulemaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin, individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the *Idaho Administrative Bulletin* are organized by a numbering system. Each state agency has a two-digit identification code number known as the "IDAPA" number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

IDAPA 38.05.01.060.02.c.ii.

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

"DOCKET NO. 38-0501-0101"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing" (Chapter 01).

"0101" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2001.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

"(BREAK IN CONTINUITY OF SECTIONS)"

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:

"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

"...in accordance with IDAPA 38.05.01.201."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, 'Rules Governing Capitol Mall Parking.'"

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	*November 14, 2001	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
02-3	March, 2002	January 23, 2002	March 6, 2002	March 27, 2002
02-4	April, 2002	February 20, 2002	April 3, 2002	April 24, 2002
02-5	May, 2002	March 27, 2002	May 1, 2002	May 22, 2002
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02-8	August, 2002	June 19, 2002	August 7, 2002	August 28, 2002
02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	**August 21, 2002	October 2, 2002	October 23, 2002
02-11	November, 2002	September 25, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
03-1	January, 2003	*November 13, 2002	January 1, 2003	January 22, 2003
03-2	February, 2003	December 18, 2002	February 5, 2003	February 26, 2003
03-3	March, 2003	January 22, 2003	March 5, 2003	March 26, 2003
03-4	April, 2003	February 19, 2003	April 2, 2003	April 23, 2003
03-5	May, 2003	March 26, 2003	May 7, 2003	May 28, 2003
03-6	June, 2003	April 23, 2003	June 4, 2003	June 25, 2003
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03-8	August, 2003	June 25, 2003	August 6, 2003	August 27, 2003
03-9	September, 2003	July 23, 2003	September 3, 2003	September 24, 2003
03-10	October, 2003	**August 20, 2003	October 1, 2003	October 22, 2003
03-11	November, 2003	September 24, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 22, 2003	December 3, 2003	December 24, 2003

****Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.***

*****Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

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THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 2001-15

**ESTABLISHING THE IDAHO COUNCIL ON CHILDRENS MENTAL HEALTH
REPEALING AND REPLACING EXECUTIVE ORDER 2001-05**

WHEREAS, children with serious emotional disturbances have unique abilities, concerns and diverse needs; and

WHEREAS, serious emotional disturbances interfere with the vital development and maturation of our state's most important resource - its children; and

WHEREAS, the appropriate treatment of children and youth with serious emotional disturbances is cost-effective because it enhances productivity, reduces utilization of more costly and invasive service, lessens social dependence and family disruption; and

WHEREAS, the State of Idaho desires to establish a comprehensive, community-based system of care emphasizing the natural support that families and peers provide; and

WHEREAS, these families would benefit from individualized services which are acceptable and accountable to them and others in the communities where they live; and

WHEREAS, children and youth with serious emotional disturbances and their families have the right to, and responsibility for, ongoing participation in determining their destiny at the direct service level and at the policy and planning level; and

WHEREAS, the Idaho Legislature has set forth its policy for the provision of these services in the Idaho Children's Mental Health Services Act; and

WHEREAS, the implementation plan formulated from the recommendations of The Needs Assessment of Idaho's Children with Serious Emotional Disturbances and Their Families proposes that the Idaho Council on Children's Mental Health be established to provide state level leadership in the development of a integrated system of care for children with mental health needs;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby establish the Idaho Council on Children's Mental Health.

The Council's responsibilities shall be:

To oversee the implementation of the plan and the legislative policy for the provision of access to treatment, prevention, and rehabilitation services for children with serious emotional disturbances;

To serve as a vehicle for inter- and intra-agency policy and program development; and

To establish local level councils according to resources, population, need and geographic considerations;

To define the specific key duties, powers, goals, and outcomes to be achieved by the local councils;

To provide leadership through the development of standards, provision of technical assistance, monitoring, evaluating and reporting on the progress of the local councils; and

To evaluate and make recommendations regarding the funding and delivery of children's mental health

services statewide.

Council membership shall be composed of representatives from the following:

The Office of the Governor;
The Legislative branch;
The Judicial branch;
The Department of Health and Welfare;
The Department of Juvenile Corrections;
The Department of Education;
The State Planning Council on Mental Health;
A parent representative or advocate;
A representative of providers of children's mental health services; and
A County Commissioner.

This Executive Order shall cease to be in effect four years after its entry into force.

Council members shall serve a term of two (2) years. The members may serve additional terms. The Governor shall appoint the Lieutenant Governor to serve as the Chairman of the Council. Staff for the Council will be provided by the Department of Health and Welfare. The Council may establish subcommittees at its discretion.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this sixteenth day of October in the year of our Lord two thousand and one and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

DIRK KEMPTHORNE
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.07 - RULES GOVERNING CONTINUING EDUCATION REQUIREMENTS

DOCKET NO. 07-0107-0101

NOTICE OF CORRECTION TO PENDING RULE

CORRECTION: This notice corrects a typographical error in the effective date section in the Notice of Pending Rule made during the publication of the pending rule. This correction is being done in conjunction with the Office of the Administrative Rules Coordinator.

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final approval. The pending rule becomes final and effective on July 1, 2002, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 67-5228, Idaho Code, notice is hereby given that this agency is correcting a typographical error with the consent of the Administrative Rules Coordinator. The action is authorized pursuant to Sections 54-1003 and 64-1006(5), Idaho Code

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the nature of the correction being made to the pending rule.

The effective date of the pending rule was set by the Board as July 1, 2002 but was inadvertently published to read "...at the conclusion of the legislative session...". The effective date of July 1, 2002 is necessary to coincide with the license renewal cycle that begins on July 1. An earlier date would penalize those electricians who are currently completing their continuing education requirements under the requirements now in effect.

The pending rule was published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, page 43. The original text of the proposed rule was published in the October 3, 2001 Idaho Administrative Bulletin, Volume 01-10, page 42.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this correction to pending rule, contact Gary Malmen, Electrical Bureau Chief, Division of Building Safety, (208) 334-2183.

DATED this 15th day of February, 2002.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Telephone: (208) 334-3951
Facsimile: (208) 855-2164

IDAPA 11 - IDAHO STATE POLICE

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-0102

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 23-932, 23-946(b), 23-1330 and 23-1408, 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 is being adopted as proposed. The original text of the proposed rule was published in the November 7, 2001, Administrative Bulletin, Volume 01-11, pages 21 through 23.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mike Burgess at (208) 884-7060.

DATED this 4th day of December, 2001.

Margaret P. White
Deputy Attorney General
Idaho State Police
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

IDAPA 11, TITLE 05, Chapter 01

RULES GOVERNING ALCOHOL BEVERAGE CONTROL

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-11, November 7, 2001, pages 21 through 23.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 15 - OFFICE OF THE GOVERNOR

15.04.01 - DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

DOCKET NO. 15-0401-0101

NOTICE OF VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the rulemaking previously initiated under this docket. The action is authorized pursuant to Section 67-5309, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for the vacating the proposed rulemaking.

The proposed rules have been vacated in response to comments received from the public during the comment period.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the vacation of rulemaking, contact Daniel Steckel at 429-5507.

DATED this 2nd day of January, 2002.

Ann Heilman
Administrator
Division of Human Resources
700 West State Street
P.O. Box 83720
Boise, ID 83720-0066
(208)429-5500
(208)334-3182 (fax)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

DOCKET NO. 16-0304-0103

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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(s) 56-202(b), 56-1004(a), 5526(a), Idaho Code and Public Law 105-33.

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 is being adopted as proposed. The original text of the proposed rule was published in the November 7, 2001 Administrative Bulletin, Volume 01-11 pages 24 through 26.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell, Chief, Bureau of Benefit Program Operations at (208) 334-5818.

DATED this 6th day of December, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax

IDAPA 16, TITLE 03, Chapter 04

RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-11, November 7, 2001, pages 24 through 26.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED

DOCKET NO. 16-0305-0201

NOTICE OF TEMPORARY RULEMAKING

EFFECTIVE DATE: These temporary rules are effective December 1, 2001 and January 1, 2002.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 56-1004(1), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the temporary rulemaking:

The rule will be modified to increase the fee for the Criminal History background check fee from thirty-four dollars (\$34) to forty-five dollars (\$45).

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary to protect the public health, safety, and welfare.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with Department clients and providers of Residential and Assisted Living Care and Certified Family Home Care.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Patti Campbell at (208) 334-5818.

DATED this 10th day of December, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0201

319. CONTRIBUTIONS FOR RESIDENTIAL AND ASSISTED LIVING FACILITY RESIDENTS.

Contributions from a third party, for a participant residing in a ~~R~~Residential and ~~A~~Assisted ~~L~~Living ~~F~~Facility, are excluded. The contribution must be paid directly to the facility. The contribution must pay for items or services, ~~other than medical care~~, provided to the participant by the facility. The items or services must not be included in the participant's ~~AABD cash State Plan Personal Care Services or his Personal Care Supplement~~ or must be charges for ~~care~~ rent, utilities, or food exceeding the ~~Department's Residential and Assisted Living Facility Level I, II or III Personal Care Supplement~~ Allowance. The participant must not be charged a higher rate than other residents of the facility. The person making the contribution must provide a signed statement identifying the item or service the payment covers, the reason the item or service is needed by the participant, and the monthly amount of the payment.

~~(4-5-00)~~(1-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

501. BASIC ALLOWANCE.

Each participant receives a basic allowance unless he lives in a nursing facility. The basic allowance for each living arrangement is listed in Subsections 501.01 through 501.04~~5~~. The Semi-Independent Group Residential Facility, Room and Board, Residential and Assisted Living Facility and Certified Family Home basic allowances are those in effect January 1, 2001. They do not change with the annual cost-of-living increase in the federal SSI benefit amount. ~~(1-1-01)F(1-1-02)T~~

01. Single Participant. Through December 31, 2000, a participant is budgeted five hundred forty-five dollars (\$545) monthly as a basic allowance when living in a situation described in Subsections 501.01.a. through 501.01.e. Beginning January 1, 2001, the basic allowance increase for a single participant is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. (3-30-01)

- a. Living alone. (7-1-99)
- b. Living with his ineligible spouse. (7-1-99)
- c. Living with another participant who is not his spouse. (7-1-99)
- d. Living in another's household. This includes a living arrangement where the participant purchases lodging (room) and meals (board) from his parent, child or sibling. (3-30-01)
- e. Living with his TAFI child. (7-1-99)

02. Couple Or Participant Living With Essential Person. Through December 31, 2000, a participant living with his participant spouse or his essential person is budgeted seven hundred sixty-eight dollars (\$768) monthly as a basic allowance. Beginning January 1, 2001, the basic allowance increase for a couple is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a couple. The increase may be rounded up. (3-30-01)

03. SIGRIF. A participant living in a semi-independent group residential facility (SIGRIF) is budgeted three hundred forty-nine dollars (\$349) monthly as a basic allowance. (7-1-99)

04. Room And Board Home. A participant living in a room and board home, as defined in Section 512, is budgeted sixty-seven dollars (\$67) monthly as a basic allowance. (1-1-01)T

05. Personal Care Supplement. A participant living in a Residential and Assisted Living Facility, or Certified Family Home with state plan personal care services, is budgeted five hundred and twenty dollars (\$520) monthly as a Basic Allowance, if he does not have enough income to pay his provider for his rent, utilities and food. To receive a Personal Care Supplement, the participant's income after exclusions and disregards must be less than his Basic Allowance. Beginning January 1, 2003, the basic allowance increase is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. (1-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

513. LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.

Each ~~A~~ participant living in a ~~r~~Residential and ~~a~~Assisted ~~l~~Living ~~f~~Facility (RALF), (see IDAPA 16.03.22, "Rules Governing Licensed Residential and Assisted Living Facilities in Idaho") or ~~e~~Certified ~~f~~Family ~~h~~Home (CFH), (see IDAPA 16.03.19, "Rules Governing Certified Family Homes") with State Plan Personal Care Services, is budgeted a basic allowance of sixty-seven dollars (\$67) monthly. A participant is also budgeted a monthly allowance for care

based on his level of care. If the participant gets a lower level of RALF or CFH care than his assessed level, his allowance is for the lower level of care. These allowances are used to determine eligibility for Medicaid. The participant is not entitled to AABD cash assistance, unless he is entitled to the Personal Care Supplement in Subsection 512.05 of these rules. If the participant does not require the RALF or CFH level of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. A participant with Home and Community-Based Services for the aged and disabled (HCBS-A&D) is not entitled to cash assistance.

~~(7-1-01)F(1-1-02)T~~

01. Care Levels And Monthly Allowances. Through December 31, 2000, care levels and monthly allowances are those listed in Table 513. Beginning January 1, 2001, through December 31, 2001, the RALF and CFH care allowances and the basic allowance increase by one-half (1/2) the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. Beginning January 1, 2002, the RALF and CFH allowances increase by the full dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.

TABLE 513 - CARE LEVELS AND ALLOWANCES AS OF 12-31-00		
	Level Of Care	Monthly Allowance
a.	Level I	Seven hundred and seventy-four dollars (\$774)
b.	Level II	Eight hundred and forty-one dollars (\$841)
c.	Level III	Nine hundred and nine dollars (\$909)

(7-1-01)T

02. CFH Operated By Relative. A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH allowances. He may receive the allowance for a person living with a relative. A relative for this purpose is the participant's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption.

(7-1-01)T

~~**03. RALF Participant In RALF Not On A&D Waiver.** A participant living in a RALF and receiving personal care services, but not A&D Waiver services, gets the same allowances as a participant in room and board with a non-relative.~~

~~(7-1-01)F~~

514. RESIDENTIAL AND ASSISTED LIVING FACILITY CARE AND CERTIFIED FAMILY HOME ASSESSMENT AND LEVEL OF CARE.

The participant's need for care, level of care, plan of care, and the licensed facility's ability to provide care is assessed by the Regional *Adult Residential Care Committee (ARCC)* Medicaid Services (RMS) when a participant is admitted. The *ARCC RMS* must approve the placement before ~~AABD cash~~ Medicaid can be approved or a Personal Care Supplement can be paid.

~~(4-5-00)(1-1-02)T~~

515. INCREASE CHANGE IN LEVEL OF CARE.

A change in the participant's level of care affects eligibility as described in Subsections 515.01 and 515.02. (1-1-02)T

01. Increase In Level Of Care. An increase in level of care is effective the month the *ARCC RMS* reassesses the level of care. ~~The participant's supplemental AABD cash is the difference between his AABD cash at the lower level of care and his AABD cash at the higher level of care.~~

~~(7-1-99)(1-1-02)T~~

~~**516. DECREASE IN LEVEL OF CARE.**~~

02. Decrease In Level Of Care. When the *ARCC RMS* verifies the participant has a decrease in his level of care, ~~his AABD cash must be decreased or closed, after timely notice. No overpayment exists for the month the level of care decreased~~ and his income exceeds his new level of care, his Medicaid must be stopped after timely notice. When the RMS determines the participant no longer meets any level of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. He can receive AABD cash.

~~(7-1-99)(1-1-02)T~~

5176. -- 520. (RESERVED).

521. MOVE FROM LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME TO LIVING SITUATION OTHER THAN A NURSING HOME OR HOSPITAL.

A participant may move from a licensed facility to a living situation, other than a nursing home or hospital. No change to his ~~AABD cash~~ Medicaid income limit is made, based on the move, until the next month.

(4-5-00)(12-1-01)T

522. MOVE TO A RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME FROM NURSING HOME OR HOSPITAL.

A participant may move to a ~~Residential and Assisted Living Facility or Certified Family Home~~ from a nursing home or hospital. ~~AABD eligibility, payment amount and underpayment are determined~~ The participant may be eligible for a Personal Care Supplement for the month of the move. Determine eligibility for, and the amount of the supplement, using Table 522.

TABLE 522 - COMPUTING RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME UNDERPAYMENT AFTER MOVING FROM NURSING HOME OR HOSPITAL <u>PERSONAL CARE SUPPLEMENT</u>		
Step	Procedure	
01.	Step 1	Divide the participant's monthly RALF or CFH allowance by thirty (30). Do not exceed the maximum allowance. Determine the participant's countable income, for the month of the move, by subtracting applicable income exclusions and disregards.
02.	Step 2	Multiply the result by the number of days left in the month. Begin with the day after the day nursing home or hospital care stopped. Use this amount to compute AABD cash in the RALF or CFH. Income already used to meet patient liability in the nursing home is not counted against AABD cash for the month of the move. Subtract income used to meet patient liability in the nursing home for the month of the move.
03.	Step 3	Subtract the nursing home personal needs allowance from the participant's countable income. Subtract the nursing home personal needs allowance from the income remaining after Step 1. Use this income to determine the amount of the Personal Care Supplement in Subsection 501.05 of these rules.
04.	Step 4	Multiply the participant's daily rate for nursing home care by the number of days in the month he got nursing home care.
05.	Step 5	Subtract this amount from the remaining income.
06.	Step 6	Use the remaining income to compute AABD cash in the RALF or CFH for the month of the move.

(4-5-00)(12-1-01)T

523. (RESERVED). ~~MOVE TO A LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME FROM LIVING SITUATION OTHER THAN NURSING HOME OR HOSPITAL~~

~~A participant may move to a residential and assisted living facility (RALF) or certified family home (CFH) from a different living situation, other than a nursing home or hospital. The AABD underpayment is determined for the month of the move using Table 523.~~

TABLE 523—COMPUTING RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME UNDERPAYMENT AFTER MOVE FROM OTHER LIVING SITUATION		
	<i>Step</i>	<i>Procedure</i>
01.	Step 1	Divide the participant's monthly RALF or CFH allowance by thirty (30). Do not exceed the maximum allowance.
02.	Step 2	Multiply the result by the number of days left in the month. Begin with the day after the day the participant moved from the other living situation. Use this amount to compute AABD cash in the RALF or CFH.
03.	Step 3	Any remainder is the participant's AABD cash underpayment for the month of the move. The remainder is rounded to the next higher dollar, if not an even dollar.

(4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

~~525. CHOICE BETWEEN AABD CASH AND HCBS-NF WAIVER SERVICES.~~

~~A participant eligible for AABD cash in a Certified Family Home or Residential and Assisted Living Facility and also eligible for services under the HCBS-NF waiver, must chose between AABD cash and waiver services. The participant must not receive AABD cash and waiver services during the same month.~~ (1-1-01)T

526.5. -- 530. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

787. PERSON ENTITLED TO HOME AND COMMUNITY BASED SERVICES (HCBS).

An aged, blind or disabled person not eligible for SSI or AABD cash in his own home, because of income deeming or income limits, is eligible for Medicaid if he meets the conditions in Subsections 787.01 through 787.12. (7-1-99)

01. Age. Is at least eighteen (18) years old. (4-5-00)

02. AABD Criteria. If under age sixty-five (65), meets the AABD blindness or disability criteria. (7-1-99)

03. AABD Resource Limit. Meets the AABD single person resource limit. (7-1-99)

04. HCBS Income Limit. For the HCBS Aged and Disabled (A&D) waiver, has income not exceeding three (3) times the Federal SSI benefit payable monthly to a single person. For the HCBS Developmentally Disabled (DD) waiver, has income not exceeding three (3) times the Federal SSI benefit payable monthly to a single person. (1-1-01)T

05. Eligible For Long Term Care. For HCBS-A&D, meets the medical conditions for nursing facility care in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Subsection 160.09. For HCBS-DD, meets the medical conditions for ICF/MR care in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 143. (3-30-01)

06. ~~Home-Care~~ Maintained In The Community. For HCBS-A&D, can be maintained in ~~his own home~~ the community with ~~Personal-Care A&D waiver~~ services (PCS) furnished under the Department's HCBS waiver. For HCBS-DD, can be maintained in the community with DD waiver services. (~~3-30-01~~)(1-1-02)T

07. Cost Of Care. For HCBS-A&D, can be cared for ~~at home~~ in the community at a cost not to exceed the statewide average cost of care for the participant's level of care. The estimated cost of care in a nursing facility is the statewide average rate for the level of care the participant requires, charged by the type of facility where he would be placed if he were not living at home. For traumatic brain injury patients, the estimated cost of care is at the nursing facility special rate. (~~3-30-01~~)(1-1-02)T

08. Care Requirement. For HCBS-A&D, must require and receive, or be likely to require and receive, HCBS-A&D waiver ~~personal-care~~ services for thirty (30) consecutive days. For HCBS-DD, must require and receive, or be likely to require and receive, HCBS-DD waiver services for thirty (30) consecutive days. (~~3-30-01~~)(1-1-02)T

09. Effective Date. Medicaid is effective the first day of the thirty (30) day period the participant is likely to require HCBS A&D or HCBS-DD waiver services. (3-30-01)

10. Participant With Spouse. A married participant living at home with his spouse who is not and HCBS participant, can choose between the SSI, CP, and FSI methods. If his spouse is also an HCBS participant or lives in a nursing home, the couple can choose between the SSI and CP methods. (7-1-99)

11. Continued Services. The participant must continue to require and receive waiver services. The participant is ineligible when there is a lapse in need for or receipt of waiver services for thirty (30) days. (7-1-99)

12. Annual Limit. A participant who applies for HCBS Medicaid, after the annual limit on HCBS-A&D or HCBS-DD waiver participants is reached, must be denied Medicaid. (3-30-01)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0109

NOTICE OF CORRECTION TO PENDING RULE

CORRECTION: This notice corrects transcriptional errors that occurred during the publication of the pending rule. This correction is being done in conjunction with the Office of the Administrative Rules Coordinator.

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2002 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, rejected, amended or modified 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 67-5228, Idaho Code, notice is hereby given that this agency is correcting a typographical error in conjunction with the Office of the Administrative Rules Coordinator. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the nature of the correction being made to the pending rule.

During the publication of the pending rule numerous changes were made from the original proposed rule. The Department received an enormous amount of written and verbal feedback and this interaction with providers, Department staff, consumers and other interested citizens resulted in the many changes that were made. Some of the changes that were submitted for publication were inadvertently left out or incorrectly published. In the Notice of Pending Rule the changes being made were clearly stated and submitted as follows:

Subsection 451.06.d. addressed prior authorization of PSR services while the provider is completing the task plan. Subsection 455.14 reintroduced Occupational Therapists into the rules after they were initially removed in the proposed rule.

Subsections 451.06.d., 451.10.a., and 451.10.b. are being republished following this notice as they should have published in the pending rule and as they were submitted and published in the proposed rule in the October 3, 2001 Idaho Administrative Bulletin, Volume 01-10, pages 228 and 229. Subsection 455.14 was inadvertently omitted from the pending rule that published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, page 223 and is being republished here as it was submitted.

The pending rule was published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, pages 211 through 224. The original text of the proposed rule was published in the October 3, 2001 Idaho Administrative Bulletin, Volume 01-10, page 225 through 237.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this correction to pending rule, contact Lloyd Forbes at (208) 334-5795.

DATED this 23rd day of February, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax

THE FOLLOWING IS THE TEXT OF THE CORRECTED DOCKET 16-0309-0109

SUBSECTION 451.06.d.

06. Task Plan Oversight. Task plan oversight is the responsibility of the Department or its designee. ()

d. The Department or its designee may prior authorize PSR hours for a maximum of thirty (30) days during the task plan development. ()

SUBSECTION 451.10.a. and 451.10.b.

10. Quality Of Services. The Department or its designee shall monitor the quality and outcomes of PSR services provided to recipients, in coordination with the Divisions of Medicaid, Management Services, and Family and Community Services. ()

a. An outcome-based quality assurance review shall be conducted on each case at least annually as defined in the provider agreement. A billing audit shall be conducted through a sampling of cases. These activities shall be conducted by the Department or its designee. ()

b. Effectiveness of services as measured by a consumer's achievement of their plan objectives will be monitored by the provider and the Department or its designee by using one hundred twenty (120) day reviews. The written reviews, including a summary of objectives met and not met by consumers, will be used to develop provider profiles to assist recipients with provider selection. ()

SUBSECTION 455.14

14. Occupational Therapist. An occupational therapist shall be licensed in accordance with ~~Chapter~~ Title 54, ~~Chapter 37, Idaho Code, and IDAPA 22.01.09, "Rules for the Licensing of Occupational Therapists and Occupational Therapist Assistants".~~ Training and experience in a mental health setting are required.(3-30-01)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0202

NOTICE OF TEMPORARY RULEMAKING

EFFECTIVE DATE: These temporary rules are effective January 1, 2002.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted temporary rules. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

A consistent Medicaid reimbursement methodology for commercial non-emergency transportation providers will be implemented January 1, 2002. The Department attempted to involve stakeholders in the development of reimbursement methodology by requesting operating cost data from existing commercial non-emergency Medicaid transportation providers in Idaho. The amount of data returned to the Department from providers was insufficient to develop an accurate rate. The Department then sampled commercial rates from around the state to arrive at a dollar amount which reflected the industry norm in Idaho, and a methodology using a base rate plus a "per mile" reimbursement was finalized.

Individual, non-commercial, non-emergency transportation providers use their own private vehicles to transport Medicaid clients for medical and non-medical (waiver) activities. Reimbursement will change from the amount reimbursed to state employees using their personal vehicles on state business, to a fixed rate per mile.

Reimbursement for meals was written in rule as "shall not exceed the amount allowed for state employees in travel status". Meals will be reimbursed at a rate not to exceed seven dollars (\$7) per meal or a maximum of twenty-one dollars (\$21) per day per person.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary to implement Governor's Executive Order 2001-10 and to comply with the requirement of Section 67-3516(1), Idaho Code, which limits expenditures to appropriations. This rule will also improve the general welfare by making payments more consistent and fair among transportation companies.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rules, contact Arla Farmer at (208) 364-1958.

DATED this 13th day of December, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0202

151. NON-EMERGENCY TRANSPORTATION.

01. General Coverage For Non-Emergency Transportation. Non-emergency transportation is all transportation that is not of an emergency nature, including non-medical transportation under waiver programs. An emergency is a condition described in Subsection 150.01.e. Medicaid will reimburse non-emergency transportation by commercial or non-commercial transportation providers under the following circumstances and limitations:

(10-1-00)T

a. The travel is essential to get to or from a medically necessary service or a waiver service covered by Medicaid; and (10-1-00)T

b. The person for whom services are billed is actually transported for all the distance billed; and (10-1-00)T

c. The mode of transportation is the lowest in cost to the Medicaid program that is appropriate to the medical needs of the client; and (10-1-00)T

d. The transportation is to the nearest medical or waiver service provider appropriate to perform the needed services, and transportation is by the most direct route practicable. Reimbursement will be limited to the distance of the most direct route practicable; and (10-1-00)T

e. Other modes of transportation, including personal vehicle, assistance by family, friends and charitable organizations, are unavailable or impractical under the circumstances; and (10-1-00)T

f. The travel is authorized by the Department prior to the transportation; and (10-1-00)T

g. Authorization for the travel is requested from the Department at least twenty-four (24) hours in advance of the travel to the medical appointment or waiver service excluding Saturdays, Sundays, and state holidays; and (10-1-00)T

h. The transporter has completed and signed a current Medicaid provider agreement; and (10-1-00)T

i. Travel is not covered by the service to which the client is being transported; and (10-1-00)T

j. Transportation is paid on a reimbursement basis only; payment will not be issued prior to delivery of the service. (10-1-00)T

02. Exceptions. Despite the preceding rules, Medicaid will cover transportation services under the following circumstances: (10-1-00)T

a. Transportation services may be retroactively approved when a client is found retroactively eligible, the transportation service falls within the period of retroactive eligibility, and the transporter was a Medicaid transportation provider at the time of the transport for which reimbursement is sought. (10-1-00)T

b. If the trip distance is less than twenty-one (21) miles, prior approval for non-commercial non waiver transport is not necessary. For Subsection 151.02, a trip is the distance a transporter carries a client in the course of a day. Therefore, the total mileage of a round-trip transport that takes place within one (1) day will be considered in determining whether this exception applies. Even though prior approval is not required, the transporter shall maintain all records as described in Subsection 152.02.d. of these rules. This exception is not available to commercial providers. ~~(10-1-00)T~~(1-1-02)T

c. Reimbursement for non-commercial transportation will be limited as required by Section 56-227E, Idaho Code, and as expressed in Subsection 152.02.b. (10-1-00)T

03. Services Incidental To Travel. Medicaid will reimburse for the reasonable cost actually incurred of meals, lodging, a personal assistant and other necessary services incidental to travel, only under the following

conditions: (10-1-00)T

a. Approval of the service is requested from the Department at least twenty-four (24) hours in advance of the travel. Excluding Saturdays, Sundays, and state holidays. (10-1-00)T

b. The reasonable cost of meals actually incurred in transit will be approved when necessary, when there is no other practical means of obtaining food, and only when an overnight stay is required to receive the service. Reimbursement shall not exceed ~~the amount allowed for state employees in travel status. The Idaho State Travel and Procedures of the Idaho State Board of Examiners, Appendices are incorporated by reference in this chapter seven~~ dollars (\$7) per meal or a maximum of twenty-one dollars (\$21) per day per person. ~~(10-1-00)T~~(1-1-02)T

c. The reasonable cost actually incurred for lodging will be approved when the round trip and the needed medical service, in practicality, can not be completed in the same day. The travel must entail a one (1) way distance of at least two hundred (200) miles, or a normal one (1) way travel time of at least four (4) hours. The incidental travel expenses of a family member or other companion will be covered when medical necessity or the vulnerability of the individual requires accompaniment for safety, and no less-costly alternative is available. Lodging reimbursement will not be paid when the stay is in the home of a relative or acquaintance. (10-1-00)T

(BREAK IN CONTINUITY OF SECTIONS)

153. REIMBURSEMENT RATES.

01. Commercial Transportation. ~~Payment shall be at the rate charged by the provider to a third party with billing requirements comparable to the Medicaid program or, if there is no comparable third party, at the rate charged to the general public plus a reasonable administrative charge. The provider must demonstrate that the administrative charge is an amount proportional to the additional administrative costs attributable to providing services to Medicaid clients. A statewide uniform payment rate shall be established through a study conducted no less frequently than each third year, that evaluates the actual charges of, and costs reasonably incurred by the typical commercial transportation provider, together with the reasonable administrative costs incurred by the typical provider in keeping records for Medicaid-related transportation and billing the Department.~~ (10-1-00)T(1-1-02)T

02. Non-Commercial Providers -- Agency And Individual. ~~Payment for each Medicaid passenger shall be at the rate, rounded up to the nearest whole cent, the Idaho Board of Examiners will reimburse state employees to use their personal vehicles on state business, to a maximum of five (5) passengers per trip or leg of a trip.~~ (10-1-00)T(1-1-02)T

a. Agency Provider Reimbursement. A statewide uniform payment rate shall be established through a study conducted no less frequently than each third year, that evaluates the actual costs reasonably incurred by the typical agency transportation provider, together with the reasonable administrative costs incurred by the typical agency transportation provider in keeping records for Medicaid-related transportation and billing the Department. (1-1-02)T

b. Individual Provider Reimbursement. A uniform payment rate shall be established through a study conducted no less frequently than each third year, that evaluates the actual costs of fuel reasonably incurred by the typical non-commercial transportation provider whose personal vehicle averages fifteen (15) miles per gallon. (1-1-02)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0203

NOTICE OF TEMPORARY RULEMAKING

EFFECTIVE DATE: These temporary rules are effective March 1, 2002.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted temporary rules. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

Medicaid will cover up to four (4) covered drugs and pharmacy items per calendar month for eligible adults after the month of their 21st birthday. Covered drugs and pharmacy items in excess of four (4) per calendar month will not be covered by Medicaid unless prior authorized by the Department. Medicaid recipients shall be responsible for prescription charges for drugs and pharmacy items which exceed four (4) per calendar month and which have not been prior authorized by the Department.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary to protect the public health, safety, and welfare and to implement Executive Order 2001-10 and to comply with Section 67-3516, Idaho Code, which restricts expenditures to available funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rules, contact Arla Farmer at (208) 364-1958.

DATED this 13th day of December, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0203

808. COVERAGE.

The Medicaid program will cover, without prior authorization, up to four (4) covered drugs and pharmacy items per calendar month for eligible adults, beginning the calendar month following their twenty-first birthday. In addition to those items listed in Subsection 812.03 in these rules, covered drugs and pharmacy items in excess of four (4) per calendar month must be prior authorized by the Department. The request for prior authorization of each covered drug or pharmacy item in excess of four (4) per month shall follow the process set forth in Subsection 812.03 in these rules. (3-1-02)T

~~808.~~ **809. (RESERVED).**

810. FINANCIAL OBLIGATIONS OF RECIPIENTS.

Recipients shall be responsible for prescription charges if: (4-5-00)

01. Day's Supply. The day's supply obtained exceeds the Department's allowable amount (recipient pays the cost of the additional medication). (4-5-00)

02. Drugs Not Covered. The drugs are not covered by the Medicaid Drug Program (recipient pays the entire cost). (4-5-00)

03. Brand Name Drugs. The recipient will only accept a brand name product which is part of the FUL (federal upper limit) or SMAC (state maximum allowable cost) listing and the physician has not specified the brand name drug to be medically necessary (recipient pays the entire cost). (4-5-00)

04. Medication For Multiple Persons. When the medication is for more than one (1) person and the second person is not covered under Medicaid (recipient pays the cost of the non-covered person's portion). (4-5-00)

05. No Prior Authorization. The covered drug or pharmacy item has not received prior authorization for Medicaid payment as required in Section 808 or Subsection 812.03 in these rules. (3-1-02)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.04 - RULES OF THE IDAHO COUNCIL ON DOMESTIC VIOLENCE GRANT FUNDING

DOCKET NO. 16-0504-0101

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 pending rule. The action is authorized pursuant to Section(s) 39-5209 and 39-5207(2), Idaho Code.

DESCRIPTIVE SUMMARY: The pending rule is being adopted as proposed. The original text of the proposed rule was published in the November 7, 2001 Administrative Bulletin, Volume 01-11, page(s) 48 through 56.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Celia V. Heady at (208) 334-6512.

DATED this 7th day of December, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax

IDAPA 16, TITLE 05, Chapter 04

RULES OF THE IDAHO COUNCIL ON DOMESTIC VIOLENCE GRANT FUNDING

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-11, November 7, 2001, pages 48 through 56.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-0201

NOTICE OF TEMPORARY RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that the agency has adopted a temporary rule. The action is authorized pursuant to Section 36-2107(b) and (d), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

The change in Rule 063.01 and 063.02 permits an outfitter the benefit of reducing the number of guides required to one (1) guide for six (6) through twelve (12) snowmachines on non-groomed trails and one (1) guide for sixteen (16) through thirty (30) snowmachines on groomed trails if the guide has electronic communication for assistance at all times during the excursion.

TEMPORARY RULE JUSTIFICATION: The advent of electronic communications has reduced the necessity to have two guides at all times for six (6) through twelve (12) snowmachines on non-groomed trails and for sixteen (16) through thirty (30) snowmachines on groomed trails. The Board is using this temporary rule in the 2001-2002 snowmobiling season to see if the exemption in guide ratios addresses this change in circumstances.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees imposed or increased.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact: Dean Sangrey, Executive Director, (208) 327-7380 - FAX 327-7382.

DATED this 3rd day of January, 2002.

Dean Sangrey, Executive Director
Outfitters and Guides Licensing Board
1365 North Orchard, Suite 172
Boise, Idaho 83706
(208) 327-7380
FAX (208) 327-73820

THE FOLLOWING IS THE TEXT OF DOCKET NO. 25-0101-0201

063. SNOWMOBILING.

All general Rules for outfitting and guiding shall apply to snowmobiling. In addition, the following general rules apply: (3-1-86)

01. Non-Groomed Trails. All machines shall be accompanied by at least one (1) guide for one (1) through five (5) snowmachines, two (2) guides for six (6) through twelve (12) snowmachines, and one (1) additional guide for each additional ten (10) snowmachines. The maximum number of snowmachines allowed in one (1) group

shall not exceed thirty (30). One (1) guide shall lead and one (1) trail where more than five (5) snowmachines are involved. (3-1-86)

02. Groomed Trails. All machines shall be accompanied by at least one (1) guide for one (1) through fifteen (15) snowmachines, and two (2) guides for sixteen (16) through a total of thirty (30) snowmachines. One (1) guide shall lead and one (1) trail where more than fifteen (15) machines are involved. The maximum number of snowmachines allowed in one group shall not exceed thirty (30). (3-1-86)

03. Emergency Equipment. All snowmobiling tours shall have with them necessary emergency equipment, a first aid kit, tools, and spare parts for the machine(s) in use. (5-1-95)

04. Reduction In Guide Ratios. Upon application to the Board by the outfitter, the Board may reduce the number of guides on non-groomed trails to one (1) guide for six (6) through twelve (12) snowmachines and the number of guides on groomed trails to one (1) guide for sixteen (16) through thirty (30) snowmachines if the guide has electronic communication for summoning assistance at all times during the excursion. (1-1-02)T

**OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR
AND THE IDAHO DEPARTMENT OF PARKS AND RECREATION**

IDAPA 26 - IDAHO DEPARTMENT OF PARKS AND RECREATION

**26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES**

DOCKET NO. 26-0120-0201

NOTICE OF CORRECTIVE ACTION - CORRECTION TO FINAL RULE

EFFECTIVE DATE: The effective date of this corrective action is July 1, 2001.

AUTHORITY: In compliance with Sections 67-5204, 67-5221, 67-5223, 67-5224, and 67-5291, Idaho Code, notice is hereby given that this corrective action is being taken by the Office of Administrative Rules. The original action is authorized pursuant to Sections 67-4223, and 67-4249, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the corrective action:

Part of the Fee Table in Subsection 26.01.20.250.10.f., specifically the part of the fee table for Harriman State Park which set the fee for use of the Ranch Manager's House, was inadvertently left out of the printed edition of the Idaho Administrative Code, July 1, 2001. This error occurred during the printing of the Administrative Code for 2001. The Subsection is being reprinted here as it was originally adopted and codified in Docket No. 26-0120-9901 and approved by Senate Concurrent Resolution 154 during the 2000 legislative session. This rule has been codified in compliance with all provisions of Chapter 67, Title 52, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this correction, contact Dennis Stevenson at 332-1820.

DATED this 17th day of December, 2001.

Dennis R. Stevenson
Assistant Administrative Rules Coordinator
Department of Administration
Office of Administrative Rules
P.O. Box 83720
Boise, ID 83720-0306
(208) 332-1820
(208) 334-2395 Fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0120-0201

250. FEE SCHEDULE.

SUBSECTION 250.10.f.

HARRIMAN STATE PARK	
Dormitory and Cookhouse - per person (fifteen (15) person minimum, forty (40) person maximum)	\$12.00/night
Cleaning/Damage Deposit	\$150.00
Boy's House - (Maximum capacity--Seventy (70) persons)	
Up to four (4) hours	\$50.00
Full day	\$80.00
Cleaning/Damage deposit	\$50.00
Ranch Manager's House - (Maximum capacity -- eight (8) persons)	
Cleaning/Damage deposit	\$250.00/night
	\$50.00

(3-10-00)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0201

NOTICE OF NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This negotiated rulemaking action is authorized by Section 39-105, Idaho Code. The formal rulemaking action is authorized by Sections 39-105 and 39-107, Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to contact Diane Riley at (208)373-0502 or driley@deq.state.id.us.

PRELIMINARY DRAFT: A preliminary draft of the rule can be obtained at www2.state.id.us/deq/rules/58-0101-0201.htm or by contacting Diane Riley at (208)373-0502 or driley@deq.state.id.us.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to revise the open burning rule to remedy some inconsistencies between the language and the requirements of other local, state and federal rules, regulations and laws. The changes are also needed to correct some awkward or ambiguous phrasing. Burn periods for prescribed fires, additional prohibitions, and reasonable precautions are proposed. Burn periods for prescribed fires, additional prohibitions, and reasonable precautions are proposed. The proposed rule will clarify the requirements for the burning of residential solid waste, and references the adoption of the Smoke Management and Crop Residue Disposal Act. Anyone who conducts or regulates open burning or who may be affected by smoke from open burning may be interested in this rulemaking.

DEQ intends to conclude the negotiations by May 31, 2002 and publish a proposed rule for public comment in the August 2002 issue of the Idaho Administrative Bulletin. Using and taking into consideration public comment, DEQ intends to present the rule to the Board of Environmental Quality (Board) for adoption of a pending rule in November 2002.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Diane Riley at (208)373-0502 or driley@deq.state.id.us.

Anyone may submit written comments on the preliminary draft by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before March 29, 2002.

Dated this 28th day of December, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES

DOCKET NO. 58-0103-0201

NOTICE OF NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. The negotiated rulemaking action is authorized by Section 39-105, Idaho Code. The formal rulemaking action is authorized by Chapter 1, Title 39, and Chapter 36, Title 39, Idaho Code.

MEETING SCHEDULE: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact Barry Burnell at (208)373-0502 or bburnell@deq.state.id.us.

February 12, 2002, 9 a.m.
Department of Environmental Quality
Conference Room C
1410 N. Hilton, Boise, Idaho

PRELIMINARY DRAFT: A preliminary draft of the rule can be obtained at www2.state.id.us/deq/rules/58-0103-0201.htm or by contacting Barry Burnell at (208)373-0502 or bburnell@deq.state.id.us.

DESCRIPTIVE SUMMARY: The Idaho Department of Environmental Quality (DEQ) is evaluating the various conditions and circumstances that are used for making determinations of when public or central wastewater treatment facilities are reasonably accessible to undeveloped property. DEQ conducts reviews of proposed subdivisions at the request of city and county governmental agencies.

The purpose of this rulemaking is to provide greater detail to DEQ and the health districts in making decisions as to when central wastewater treatment facilities are reasonably accessible for new development and for issuing subsurface sewage disposal permits. The rule is needed to protect public health from ground water degradation due to nitrate contributions from septic systems in areas where subdivisions may be better served by central wastewater facilities. The rule will define the conditions in which septic systems are an acceptable alternative to central wastewater treatment facilities.

The rule will provide for a revised method to estimate wastewater flow from single family dwellings. The current rule uses the number of bedrooms to estimate wastewater flow from single family dwellings, which results in questions as to when is a room a bedroom. The revised rule eliminates this problem by estimating wastewater flow based on dwelling square footage. This rule will also revise the list of systems installed by complex septic system installers, delete the exemption from licensure requirement for public works contractors, revise the separation distance to surface waters by adding additional categories for watertight pipe (irrigation) and tiled ditches, and adopt additional siting criteria.

Upon conclusion of the negotiated rulemaking process, DEQ intends to present a rule to the Board of Environmental Quality (Board) in April or June 2002 for temporary adoption and, at the same time, commence formal rulemaking with the publication of a proposed rule.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Barry Burnell at (208)373-0502 or bburnell@deq.state.id.us.

Anyone may submit written comments on the preliminary draft by mail, fax or e-mail to the address below. DEQ will consider all written comments received by the undersigned on or before March 6, 2002.

Dated this 28th day of December, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

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IDAPA 26 - IDAHO DEPARTMENT OF PARKS AND RECREATION

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Bulletin Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

Because of the moratorium on proposed rulemaking during the legislative session, there are no proposed rules being promulgated or published in this month's Bulletin

Please refer to the Idaho Administrative Bulletin, **February 6, 2002, Volume 02-2** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

Citizens of your county can view all issues of the Idaho Administrative Bulletin at the county law libraries.

Copies of the Administrative Bulletin and other rules publications are available for purchase. For subscription information and ordering call (208) 332-1820 or write the Office of Administrative Rules, Department of Administration, 650 W. State St., Room 100, Boise, Idaho 83720-0306. Visa and Mastercard accepted.

The Idaho Administrative Bulletin and Administrative Code are available on-line at: <http://www2.state.id.us/adm/adminrules/>

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
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