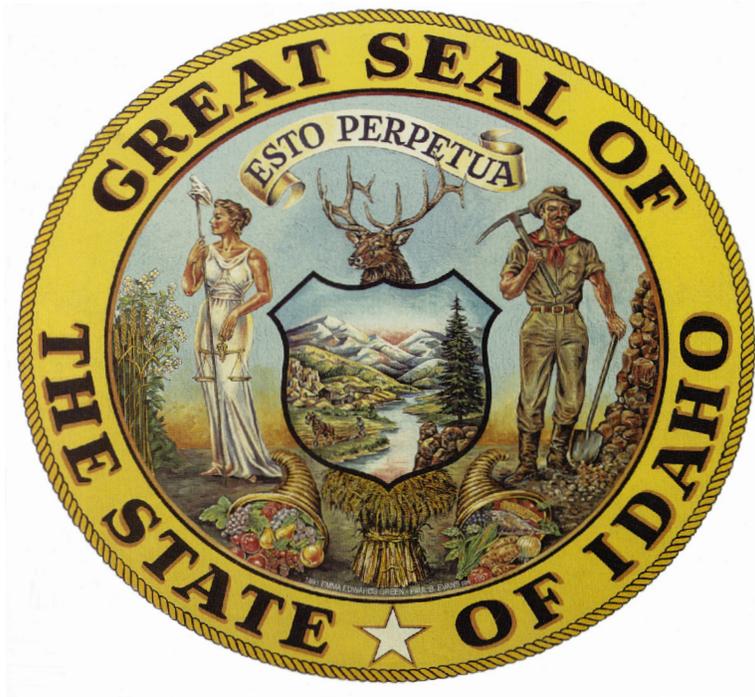


IDAHO ADMINISTRATIVE BULLETIN

July 7, 2010 -- Volume 10-7

Idaho Department of Administration
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C.L. "Butch" Otter, Governor
Mike Gwartney, Director, Department of Administration
Dennis Stevenson, Administrative Rules Coordinator
Edward Hawley, Administrative Rules Specialist
Bradley Hunt, Desk-top Publishing Specialist

IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is a monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. All official rulemaking notices, official rule text, executive orders of the Governor, all legislative documents affecting rules, and any other documents required by law are published in the Bulletin.

State agencies are required to provide public notice of all proposed rulemaking actions and must invite public input once proposed rulemaking has been initiated. The public receives notice of proposed rulemaking actions through the Idaho Administrative Bulletin and a Public Notice (legal notice) that publishes in specific newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties can submit written comments to the agency or request public hearings of the agency if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual "Notice of Rulemaking" for each proposed rule that is published in the Bulletin. After the comment period closes, the agency considers fully all information submitted regarding the proposed rule. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin **09-1** refers to the first Bulletin issued in calendar year **2009**; Bulletin **10-1** refers to the first Bulletin issued in calendar year **2010**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **10-1** refers to January 2010; Volume No. **10-2** refers to February 2010; and so forth. Example: The Bulletin published in January 2010 is cited as Volume **10-1**. The December 2009 Bulletin is cited as Volume **09-12**.

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 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 only published in the Bulletin and **not** printed in the Administrative Code.

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

THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho's administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the 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 the 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 consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a “Notice of Intent to Promulgate - Negotiated Rulemaking” in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed or temporary rule, or both.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein 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 Rulemaking - Proposed Rule” in the Bulletin. This notice must include:

- a) the specific statutory authority (from Idaho Code) 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) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.
- d) the text of the proposed rule prepared in legislative format;
- e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- f) 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;
- g) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- h) the deadline for public (written) comments on the proposed rule.

All proposed rulemakings that are submitted for publication in the Bulletin that would impose a fee or charge must be accompanied by a cost/benefit analysis that is prepared by the agency. This cost/benefit analysis must estimate, as reasonably as possible, the costs to the agency to implement the rule and the estimated costs that would be borne by citizens or the private sector. This analysis is filed with the Director of LSO who then forwards it to the appropriate germane joint subcommittee assigned to review the promulgating agency’s proposed rules.

When incorporating by reference, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference any additional materials into the rule. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can be accessed on a website or post this information on its own website, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s website.

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, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the Bulletin officially stops the formal rulemaking process.

TEMPORARY RULEMAKING

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

- a) 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 one or more of the above legal criteria and the governor finds it is necessary that a rule become effective before it has been submitted to the legislature for review and approval and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows that agency to make a temporary rule immediately effective upon adoption. However, a temporary rule that imposes a fee or charge may be adopted only if the governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

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

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, will rescind the temporary rule.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures 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 Rulemaking Pending Rule." This includes:

- a) a statement giving 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 a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or

accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

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 change 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 Rulemaking" is published.

FINAL RULEMAKING

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

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 an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule reviewed by the legislature and not rejected, amended or modified becomes 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 that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs, 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 Idaho Administrative Code - annual subscription on CD-ROM. The Code is an annual compilation of all final administrative rules and all enforceable temporary rules and also includes all executive orders of the Governor that have published in the Bulletin, all legislative documents affecting rules, a table of contents, reference guides, and a subject index.

The Idaho Administrative Bulletin - annual subscription available on individual CD-ROM sent out monthly. The Bulletin is an official monthly publication of the State of Idaho and is available for purchase on CD-ROM only. Yearly subscriptions or individual CD-ROM's are available for purchase.

Internet Access - The Administrative Code and Administrative Bulletin, and many other rules-related documents are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>

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 38.05.01.200.02.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.

“**38.**” refers to the Idaho Department of Administration

“**05.**” refers to Title **05**, which is the Department of Administrations’s Division of Purchasing

“**01.**” refers to Chapter **01** of Title 05, “Rules of the Division of Purchasing”

“**200.**” refers to Major Section **200**, “Content of the Invitation to Bid”

“**02.**” refers to Subsection 200.02.

“**c.**” refers to Subsection 200.02.c.

“**ii.**” refers to Subsection 200.02.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 “-”, (**38-0501-1001**). 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 number:

“DOCKET NO. 38-0501-1001”

“**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**).

“**1001**” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2010**. A subsequent rulemaking on this same rule chapter in calendar year 2010 would be designated as “**1002**”. The docket number in this scenario would be 38-0501-**1002**.

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 of a rule that is part of the same rule, a typical internal citation may appear as follows:

“...as found in Section 201 of these rules.” OR “...in accordance with Subsection 201.06.c. of these rules.”

The citation may also include the IDAPA, Title, or Chapter number, 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 rule.

“01” denotes the Chapter number of the rule.

“201” denotes the main Section number of the rule to which the citation refers.

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 2010

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
10-1	January 2010	*November 13, 2009	January 6, 2010	January 27, 2010
10-2	February 2010	January 8, 2010	February 3, 2010	February 24, 2010
10-3	March 2010	February 5, 2010	March 3, 2010	March 25, 2010
10-4	April 2010	March 5, 2010	April 7, 2010	April 28, 2010
10-5	May 2010	April 2, 2010	May 5, 2010	May 26, 2010
10-6	June 2010	May 7, 2010	June 2, 2010	June 23, 2010
10-7	July 2010	June 4, 2010	July 7, 2010	July 28, 2010
10-8	August 2010	July 2, 2010	August 4, 2010	August 25, 2010
10-9	September 2010	July 30, 2010	September 1, 2010	September 22, 2010
10-10	October 2010	**August 27, 2010	October 6, 2010	October 27, 2010
10-11	November 2010	October 1, 2010	November 3, 2010	November 24, 2010
10-12	December 2010	November 5, 2010	December 1, 2010	December 22, 2010

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2011

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
11-1	January 2011	*November 19, 2010	January 5, 2011	January 26, 2011
11-2	February 2011	January 14, 2011	February 2, 2011	February 23, 2011
11-3	March 2011	February 11, 2011	March 2, 2011	March 23, 2011
11-4	April 2011	March 11, 2011	April 6, 2011	April 27, 2011
11-5	May 2011	April 8, 2011	May 4, 2011	May 25, 2011
11-6	June 2011	May 13, 2011	June 1, 2011	June 22, 2011
11-7	July 2011	June 10, 2011	July 6, 2011	July 27, 2011
11-8	August 2011	July 8, 2011	August 3, 2011	August 24, 2011
11-9	September 2011	August 5, 2011	September 7, 2011	September 28, 2011
11-10	October 2011	**August 31, 2011	October 5, 2011	October 26, 2011
11-11	November 2011	October 7, 2011	November 2, 2011	November 23, 2011
11-12	December 2011	November 4, 2011	December 7, 2011	December 28, 2011

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

*****Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

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IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-1001

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 22-112, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

Wednesday, June 23, 2010 at 9:00 a.m.

**Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
Boise, Idaho**

Additional meeting(s) may be held if necessary. Please contact ISDA at 208-332-8684 to be included on the distribution list for meeting announcements.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

Attend the negotiated rulemaking meeting(s) or provide written comments via U.S. Postal Service, email, or facsimile on or before July 28, 2010.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The Idaho Pork Producers Association has requested changes to the Idaho Preferred program product qualifications for pork. Pork product qualification changes are unknown pending negotiated rulemaking and industry input. Non-food product qualifications for Idaho Preferred will be reduced from 50% to 20% agricultural content by weight that must have been grown or raised in Idaho and there will be an added requirement that the non-food product be processed in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking, or to obtain a copy of the preliminary draft of the text of the proposed rule when it becomes available, contact Leah M. Clark, Trade Specialist at 208-332-8684.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 2nd day of June, 2010.

Brian Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
P.O. Box 790
Boise, ID 83701-0709
Telephone: 208-332-8500
Fax: 208-334-4062

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.02 - RULES OF THE EMERGENCY MEDICAL SERVICES (EMS) PHYSICIAN COMMISSION

DOCKET NO. 16-0202-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1013A and 56-1023, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

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

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

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

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the content of the proposed updates to the EMS Physician Commission Standards Manual already represents extensive input from stakeholders gathered during 2009 and early 2010.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the *Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual*, edition 2011-1, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 4th day of June, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0202-1001

004. INCORPORATION BY REFERENCE.

The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2010~~1~~-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the internet at: www.emspc.dhw.idaho.gov or from the EMS Bureau located at 650 W. State Street, Suite B-17, Boise, Idaho, 83702, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036. ~~(3-29-10)~~(_____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221, Idaho Code, notice is hereby given this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, Idaho Code, and 42 CFR Part 435.4(1)(B).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The definition of a "financially deprived child" and the eligibility criteria for a "financially deprived child" are being added to these rules under Section 400, Aid to Families with Dependent Children (AFDC) - Related Budget Unit. This change will have no impact on a person's eligibility, and continues the Department's current policy in compliance with federal regulations.

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

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

This rulemaking has no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule clarifies a policy that is already implemented.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy McGill at (208) 334-4934.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 4th day of June, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0301-1001

400. AFDC-RELATED BUDGET UNIT.

A budget unit is a person or group of persons who are relatives of specified degree, as defined in Section 011 of these rules, who live in the same home with ~~an eligible~~ financially-deprived dependent child. Their needs, income, and resources are counted as a unit for AFDC adult eligibility. Eligibility is based on the number of budget unit members. ~~(3-30-07)~~()

01. Member of More Than One Budget Unit. No person may receive benefits in more than one (1) budget unit during the same month. (3-30-07)

02. More Than One Medicaid Budget Unit in Home. If there is more than one (1) Medicaid budget unit in a home, each budget unit is considered a separate unit. (3-30-07)

03. Budget Units Not Separate. Budget units cannot be separate if any member is a required member of both units. The units must be combined and treated as one (1) unit. (3-30-07)

04. Financially-Deprived Child. Adults are not eligible for AFDC-related Medicaid unless they are the biological or adoptive parent, or relative of specified degree, of a child who is financially deprived. Financial deprivation exists when a child meets one (1) of the criteria below: ()

a. A child's countable income and resources meet the financial requirements for the AFDC program under 42 CFR Part 435.4(1)(B) and Sections 325 and 411 of these rules; or ()

b. A child receives SSI income. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1001
NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of this temporary rule is June 1, 2010. This temporary rule will be in effect for twelve months and will expire on May 31, 2011, unless the rule is not extended by concurrent resolution of the 2011 Legislature in which case the rule expires at the conclusion of the 2011 legislative session.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 56-203, Idaho Code.

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

Given that the economy has not improved and the burden placed on low-income Idahoans in need of food assistance still exists, the Department is extending the removal of the asset test at the time of application for food stamp eligibility. This rule change will be effective for a period of twelve months beginning June 1, 2010 through May 31, 2011. This change will allow individuals with very low incomes who would otherwise be eligible for benefits, if not for the ownership of some assets, to access food assistance. This policy change aligns with the economic stimulus efforts of the American Recovery and Reinvestment Act of 2009.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rulemaking will confer a benefit to low-income Idahoans in need of food assistance.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

There is no anticipated fiscal impact to state general funds due to this temporary rulemaking. The Food Stamp Program is 100% federally funded.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change confers a benefit.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Rosie Andueza at (208) 334-5553.

DATED this 4th day of June, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEMPORARY RULE TEXT FOR DOCKET NO. 16-0304-1001

010. DEFINITIONS A THROUGH D.

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

01. Adequate Notice. Notice a household must receive on or before the first day of the month an action by the Department is effective. (4-6-05)

02. Administrative Error Claim. A claim resulting from an overissuance caused by the Department's action or failure to act. (6-1-94)

03. Aid to the Aged, Blind and Disabled (AABD). Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. (4-11-06)

04. Applicant. A person applying for Food Stamps. (6-1-94)

05. Application for Participation. The application form filed by the head of the household or authorized representative. (6-1-94)

06. Application for Recertification. When a household applies for recertification within thirty (30) days of the end of the certification period, it is considered an application for recertification even if a partial month of benefits is received. (4-11-06)

07. Authorized Representative. A person designated by the household to act on behalf of the household to apply for or receive and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. (4-11-06)

08. Battered Women and Children's Shelter. A shelter for battered women and children which is a public or private nonprofit residential facility. If the facility serves others, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. (6-1-94)

09. Boarder. Any person or group to whom a household, other than a commercial boarding house, furnishes meals and lodging in exchange for an amount equal to or greater than the thrifty food plan. Children, parents and spouses in a household must not be treated as boarders. (6-1-94)

10. Boarding House. A licensed commercial enterprise offering meals and lodging for payment to make a profit. (6-1-94)

11. Categorical Eligibility. There are two (2) types of categorically eligible households: (6-1-10)T

a. Categorically Eligible Household. If all household members receive or are authorized to receive a monthly cash payment through TAFI, AABD, or SSI, the household is categorically eligible. ~~A categorically eligible household~~ ~~is exempt from resource, gross, and net income eligibility standards.~~ ~~(4-11-06)~~ (6-1-10)T

b. Expanded Categorically Eligible Household. If a household receives a TANF-funded non-cash or in-kind service, it is categorically eligible. An expanded categorically eligible household must meet the gross and net income standards for its household size. An expanded categorically eligible household is exempt from resource standards. (6-1-10)T

12. Certification Determination. Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure

prompt, efficient and correct certifications. (6-1-94)

13. Certification Period. The period of time a household is certified to receive Food Stamp benefits. The month of application counts as the first month of certification. (4-11-06)

14. Claim Determination. The action taken by the Department establishing the household's liability for repayment when an overissuance of Food Stamps occurs. (6-1-94)

15. Client. A person entitled to or receiving Food Stamps. (6-1-94)

16. Department. The Idaho Department of Health and Welfare. (6-1-94)

17. Desk Review. A desk review is a recertification that may or may not include talking to the participant. (4-11-06)

18. Disqualified Household Members. Individuals required to be excluded from participation in the Food Stamp Program are Disqualified Household Members. These include: (6-1-94)

a. Ineligible legal non-citizen who do not meet the citizenship or eligible legal non-citizen requirements. (7-1-98)

b. Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)

c. Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)

d. Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)

e. Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (7-1-98)

f. Individuals disqualified as a fugitive felon or probation or parole violator. (7-1-98)

g. Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (7-1-98)

h. Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)

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

19. Documentation. The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)

20. Drug Addiction or Alcoholic Treatment Program. Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XIX of the Public Health Service Act (42 USC 300x, et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

178. CATEGORICALLY ELIGIBLE HOUSEHOLDS.

Households with all members meeting one (1) of the criteria below are categorically eligible for Food Stamps.

~~Categorically eligible households are resource and income eligible.~~ The Department will not compute resource eligibility. The Department will not compute gross or net income eligibility. Categorically eligible households must meet all other Food Stamp eligibility criteria. Categorically eligible households have the same rights as other households. ~~(6-1-94)(6-1-10)T~~

01. Cash Benefits. All household members are approved for, or already ~~get~~ receive, TAFI or AABD or SSI cash benefits. The household is categorically eligible. ~~(7-1-98)(6-1-10)T~~

02. Benefits Recouped. All household members have AABD or SSI benefits being recouped. The household is categorically eligible. (7-1-98)

03. Grant Less Than Ten Dollars. All household members not ~~getting~~ receiving TAFI or AABD or SSI because their grant is less than ten dollars (\$10). The household is categorically eligible. ~~(7-1-98)(6-1-10)T~~

179. HOUSEHOLDS NOT CATEGORICALLY ELIGIBLE.

The households listed below are not categorically eligible for Food Stamps unless they meet the criteria listed in Section 181 of these rules. ~~(6-1-94)(6-1-10)T~~

01. Medicaid Only. Households are not categorically eligible if any household member ~~gets~~ receives Medicaid benefits only. ~~(6-1-94)(6-1-10)T~~

02. IPV. Households are not categorically eligible, if any household member is disqualified for a Food Stamp Intentional Program Violation (IPV). (6-1-94)

03. Work Requirements. Households are not categorically eligible, if any household member fails to comply with the Food Stamp work requirements. (6-1-94)

04. Ineligible Legal Non-Citizen or Student. Households are not categorically eligible if any member is an ineligible legal non-citizen or ineligible student. (7-1-98)

05. Nonexempt Institution. Households are not categorically eligible if any member is a person living in a nonexempt institution. (6-1-94)

180. CATEGORICAL ELIGIBILITY ENDS.

Categorical eligibility ends when ~~one~~ the household ~~member is~~ no longer ~~eligible for TAFI, AABD or SSI~~ meets any of the criteria listed in Sections 178 or 181 of these rules. If the household is still eligible under Food Stamp rules, the household will continue to ~~get~~ receive Food Stamps. If categorical eligibility ends and household income or resources exceed the Food Stamp limits, the household is no longer eligible for Food Stamps. Food Stamps will stop after timely advance notice. ~~(7-1-98)(6-1-10)T~~

~~181. MIXED HOUSEHOLDS.~~

~~Households with at least one (1) member meeting the conditions below are mixed households. Resources of members meeting the conditions below are excluded. Resources of the other household members are counted.~~ (6-1-94)

~~**01. Cash Benefits.** Household member is approved for, or already gets, TAFI or AABD or SSI cash benefits.~~ (7-1-98)

~~**02. Benefits Recouped.** Household member has AABD or SSI benefits being recouped.~~ (7-1-98)

~~**03. Grant Less Than Ten Dollars.** Household member not getting TAFI or AABD or SSI because the grant is less than ten dollars (\$10).~~ (7-1-98)

181. EXPANDED CATEGORICALLY ELIGIBLE HOUSEHOLDS.

Effective June 1, 2009, a household receiving TANF-funded non-cash or in-kind services is considered an expanded categorically eligible household. The household must meet the gross and net income standards for its household size. An expanded categorically eligible household with members who are aged or disabled must have gross income at or below two hundred percent (200%) of the FPG, and must meet the net income standards for its household size. An

expanded categorically eligible household is exempt from resource standards. A household's expanded categorical eligibility is determined as of the Food Stamp interview date. (6-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

302. CATEGORICALLY ELIGIBLE HOUSEHOLD.

A household is exempt from the resource limit if all household members ~~receive or are authorized to receive monthly cash payments through TAFI, AABD, or SSI~~ meet any of the criteria listed in Sections 178 or 181 of these rules.

~~(4-11-06)~~(6-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

304. COUNTING RESOURCES FOR RECIPIENTS.

Determine resources for recipients throughout the certification period as described in Section 601 of these rules. The assets of a categorically eligible household will be excluded until eligibility is re-evaluated at the next recertification or twelve (12) month contact.

~~(4-11-06)~~(6-1-10)T

01. Anticipated Resources. If resources are anticipated at any time during an upcoming month or months, a resource determination must be made. Anticipated resources affect the entire month's eligibility for the month of receipt. (6-1-94)

02. Unanticipated Newly Acquired Resources. Consider unanticipated newly acquired resources available as of the first day of the month following the receipt of the new resource. If the client spends or uses up the resource before the first day of the next month, the resource will not be counted the next month. (6-1-94)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1001

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code.

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

Tuesday, July 13, 2010 at 1:00 p.m.

**Region IV Health & Welfare Office
Infant Toddler Program Conference Room
1720 Westgate Drive, Suite D, Boise, ID**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The summary of this action is found in Idaho Administrative Bulletin Vol. 10-5, dated May 5, 2010, pages 33 and 34. It states:

In order to safeguard the provision of services under the HCBS waiver programs, the current rules are being aligned with both federal regulations and the CMS-approved HCBS waiver requirements.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Susan Scheuerer at (208) 287-1156.

SUBMISSION OF WRITTEN COMMENTS: The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 13, 2010.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony. All written comments must be directed to the undersigned and must be delivered on or before July 13, 2010.

DATED this 4th day of June, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1002

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

Wednesday - July 14, 2010 - 10:00 a.m.

**3232 Elder Street
Conference Room D East
Boise, ID 83705**

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

1. Attend the negotiated rulemaking meeting and participate in the negotiation process;
2. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting;
3. Submit written recommendations and comments to the address below.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The Department is proposing to revise this chapter of rules as part of the Children's System Redesign project. This project will restructure benefits for children with developmental disabilities under two Home and Community Based Services (HCBS) waivers (similar to that for adults) and a related State Plan option that will replace current State Plan Developmental Disabilities Agency (DDA) benefits.

Negotiated rulemaking is being conducted by the Department in order to gather input from interested parties regarding certain key elements of this chapter.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Lauren Ertz at (208) 287-1169 or go to: www.redesignforchildren.medicaid.idaho.gov.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 14, 2010.

DATED this 4th day of June, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.13 - CONSUMER-DIRECTED SERVICES

DOCKET NO. 16-0313-1002

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 56-202, 56-203, and Sections 56-250 through 257, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

Wednesday - July 14, 2010 - 10:00 a.m.

**3232 Elder Street
Conference Room D East
Boise, ID 83705**

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

1. Attend the negotiated rulemaking meeting and participate in the negotiation process;
2. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting;
3. Submit written recommendations and comments to the address below.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The Department is proposing to revise this chapter of rules as part of the Children's System Redesign project. The restructured benefits for children with developmental disabilities will include a Family-Directed Services (FDS) option as part of a Home and Community Based Services (HCBS) waiver for children and a related State Plan option. This option is very similar to the Self-Directed (SD) option available under the Adult Developmental Disabilities Waiver program.

Negotiated rulemaking is being conducted by the Department in order to gather input from interested parties regarding certain key elements of this chapter.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Lauren Ertz at (208) 287-1169 or go to: www.redesignforchildren.medicaid.idaho.gov.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 14, 2010.

DATED this 4th day of June, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.24 - THE MEDICALLY INDIGENT PROGRAM - REQUEST FOR
MEDICAID ELIGIBILITY DETERMINATION**

DOCKET NO. 16-0324-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule is July 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 31-3503C, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under Title 31, Chapter 35, Idaho Code, the Department has the responsibility to develop and implement rules for a Medicaid eligibility determination process for applicants applying for financial assistance through the County Medically Indigent Program and Catastrophic Health Care Cost Program. This new chapter of rules provides the requirements necessary for a hospital or county to submit applications and requests to the Department to determine Medicaid eligibility for an applicant who may be medically indigent.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of these rules are appropriate for the following reasons: To comply with governing law and provide a benefit to individuals who may be medically indigent or may be eligible for Medicaid.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

At this time, the Department is unable to determine the number of County Medically Indigent applicants who will meet the Medicaid eligibility criteria. The administrative operating costs for State Fiscal Year 2011 appropriated by the Legislature is \$137,600 of which 50% is state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is being made to comply with governing law.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lori Wolff at (208) 334-6599.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 27th day of May, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0324-1001

IDAPA 16
TITLE 03
CHAPTER 24

16.03.24 - THE MEDICALLY INDIGENT PROGRAM -
REQUEST FOR MEDICAID ELIGIBILITY DETERMINATION

000. LEGAL AUTHORITY.

In accordance with Section 31-3503C, Idaho Code, the Idaho Legislature has authorized the Department of Health and Welfare to adopt and enforce rules governing requests for Medicaid eligibility determination for persons who may be medically indigent. (7-1-10)T

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.03.24, "The Medically Indigent Program - Request for Medicaid Eligibility Determination." (7-1-10)T

02. Scope. (7-1-10)T

a. The Idaho Legislature has declared that the County Medically Indigent Program and the Catastrophic Health Care Cost Program are payers of last resort. These programs are only a partial solution to the health care costs of Idaho's medically indigent citizens. Therefore, hospitals, providers, applicants, and third party applicants seeking financial assistance under the County Medically Indigent Program and the Catastrophic Health Care Cost Program are subject to the limitations and requirements in this chapter of rules. (7-1-10)T

b. In accordance with Section 31-3503E(7), Idaho Code, the denial of Medicaid eligibility is not a determination of medical indigency under the County Medically Indigent Program or the Catastrophic Health Care Cost Program. Title 31, Chapter 35, Idaho Code, provides that under the County Medically Indigent Program and the Catastrophic Health Care Cost Program eligibility for financial assistance will be determined by the respective counties and the Board. The respective counties and the Board may, limit or prioritize eligibility for financial assistance based upon such factors as availability of funding, degree of financial need, degree of clinical need, or other factors. (7-1-10)T

c. In accordance with Title 31, Chapter 35, Idaho Code, these rules provide for and establish policies, procedures, requirements, and appeal processes applicable to requests for Medicaid eligibility determination for persons who may be medically indigent. This chapter is not intended to, and does not establish an entitlement for or to receive financial assistance under Title 31, Chapter 35, Idaho Code. (7-1-10)T

d. Individuals who may be eligible for Medicaid must comply with requirements in Title XIX and Title XXI of the Social Security Act, and the following Department rules: (7-1-10)T

- i.** IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (7-1-10)T
- ii.** IDAPA 16.03.05, "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)." (7-1-10)T
- iii.** IDAPA 16.03.06, "Refugee Medical Assistance." (7-1-10)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These statements are available for public inspection and copying at cost at the Department of Health and Welfare, 450 West State Street, P.O. Box 83720, Boise, Idaho, 83720-0036. (7-1-10)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by the provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." (7-1-10)T

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter of rules. (7-1-10)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (7-1-10)T

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. (7-1-10)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (7-1-10)T

04. Telephone. (208) 334-5500. (7-1-10)T

05. Internet Website. The Department's internet website is found at www.healthandwelfare.idaho.gov. (7-1-10)T

06. Medicaid Eligibility Business Unit. For requests and determinations under this chapter of rules, the Department may be contacted at the following: (7-1-10)T

a. Address: P.O. Box 83720, Boise, Idaho 83720-0003. (7-1-10)T

b. Telephone: (208) 528-3770. (7-1-10)T

c. Facsimile: (208) 528-3771. (7-1-10)T

d. E-mail address: "SRCU-CntyHospApp@dhw.idaho.gov." (7-1-10)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS.

01. Confidential Records. The use or disclosure of records or information covered by these rules must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (7-1-10)T

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (7-1-10)T

03. Authorization for Disclosure. An application for financial assistance and request for Medicaid eligibility determination constitutes authorization for hospitals, providers, the Board, the Department, and the respective counties of the State of Idaho to copy, transmit, share, and exchange information pertaining to an applicant's health and finances for the purpose of determining Medicaid eligibility or medical indigency. (7-1-10)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

For the purposes of this chapter of rules, the following terms apply. (7-1-10)T

01. AABD. Aid to the Aged, Blind, and Disabled. (7-1-10)T

02. Applicant for Financial Assistance. A person who is or may be seeking financial assistance under Title 31, Chapter 35, Idaho Code whose application is not fully processed. (7-1-10)T

03. Application. An application for financial assistance under Section 31-3504, Idaho Code, and the uniform form used for the initial review and the Department's Medicaid eligibility determination pursuant to Section 31-3503E, Idaho Code. An application under Title 31, Chapter 35, Idaho Code, for financial assistance is not an application for Medicaid. (7-1-10)T

04. Board. The Board of the Catastrophic Health Care Cost Program established in Section 31-3517, Idaho Code. (7-1-10)T

05. Clerk. The clerk of the respective counties or his designee. (7-1-10)T

06. Counties. The respective counties described in Title 31, Chapter 1, Idaho Code. (7-1-10)T

07. County Commissioners. The Board of County Commissioners in their respective counties. (7-1-10)T

08. Department. The Idaho Department of Health and Welfare. (7-1-10)T

09. Director. The Director of the Idaho Department of Health and Welfare or his designee. (7-1-10)T

10. Eligibility Determination. The policies, processes, criteria, and standards used by the Department to determine whether or not an individual is eligible for Medicaid. (7-1-10)T

11. HIPAA. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) under 42 USC Section 12204, and federal regulations at 45 CFR Parts 160, 162, and 164. (7-1-10)T

12. Hospital. A facility licensed in accordance with Title 31, Chapter 13, Idaho Code. (7-1-10)T

13. Medicaid. The federally funded program for medical care (Title XIX, Social Security Act) also known as Idaho's Medical Assistance Program. (7-1-10)T

14. Obligated Person. The person or persons who are legally responsible for an applicant. (7-1-10)T

15. Third-Party Applicant. A person other than an obligated person who completes, signs, and files an application on behalf of a patient. (7-1-10)T

16. Title XIX. Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the States. This program pays for medical assistance for certain individuals and families with low income and limited resources. (7-1-10)T

17. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP), is a federal and state partnership similar to Medicaid, that expands health insurance to targeted, low- income children. (7-1-10)T

011. -- 099. (RESERVED).

100. ELIGIBILITY CRITERIA.

Eligibility criteria and determinations for Medicaid must comply with Department rules as described in Subsections 100.01 through 100.03 of this rule. (7-1-10)T

01. IDAPA 16.03.01. "Eligibility for Health Care Assistance for Families and Children." (7-1-10)T

02. IDAPA 16.03.05. "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)." (7-1-10)T

03. IDAPA 16.03.06. "Refugee Medical Assistance." (7-1-10)T

101. -- 109. (RESERVED).

110. REQUESTS FOR MEDICAID ELIGIBILITY DETERMINATION.

Requests for Medicaid eligibility determination for persons who may be medically indigent may only be accessed by a hospital or a county through a request for Medicaid eligibility determination addressed to the Department. By signing a request for Medicaid eligibility determination, each hospital or county requesting a Medicaid eligibility determination agrees to comply with these rules. (7-1-10)T

01. Form of Request. Each hospital or county requesting a Medicaid eligibility determination under these rules must apply to the Department on a form provided by the Department and must provide all information required by the Department. (7-1-10)T

02. Filing Request. Each request for Medicaid eligibility determination submitted to the Department under these rules must be signed by an authorized representative of the hospital or the county. The request for Medicaid eligibility determination may be submitted to the Department by mail, electronically, or by facsimile as described in Section 005 of these rules. (7-1-10)T

03. Application for Financial Assistance Required. A completed and signed application for financial assistance under Title 31, Chapter 35, Idaho Code, must be submitted and transmitted to the Department along with the request for Medicaid eligibility determination. (7-1-10)T

04. Other Information as Requested. Each hospital or county requesting a Medicaid eligibility determination by the Department under these rules must provide all other information that may be requested by the Department for the proper administration and enforcement of the provisions of these rules. (7-1-10)T

05. Cooperation of Applicant, Third-Party Applicant, and Obligated Person. Each applicant, third-party applicant, and obligated person must cooperate with the Department and provide documentation necessary to complete the Department's determination of Medicaid eligibility. (7-1-10)T

111. -- 119. (RESERVED).

120. TIME LIMITS.

Each request for Medicaid eligibility determination submitted to the Department under these rules must be filed in accordance within the following time limits: (7-1-10)T

01. Hospital. Within one (1) working day of the completion of the hospital's initial review that determines a patient may be medically indigent, the hospital must transmit a copy of the completed application for financial assistance and a request for Medicaid eligibility determination to the Department. (7-1-10)T

02. County. Within one (1) business day of the filing of an application for financial assistance under Title 31, Chapter 35, Idaho Code, in the clerk's office, the clerk must transmit a copy of the completed application for financial assistance and request for Medicaid eligibility determination to the Department. (7-1-10)T

121. -- 129. (RESERVED).

130. ELIGIBILITY DETERMINATION.

Each request for Medicaid eligibility determination submitted to the Department under this chapter of rules will be processed by the Department in accordance with the following rules: (7-1-10)T

01. Medicaid. IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (7-1-10)T

02. AABD. IDAPA 16.03.05, "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)."

03. Refugee. IDAPA 16.03.06, "Refugee Medical Assistance." (7-1-10)T

04. Logging an Application and Request. The Department will log each application and request for Medicaid eligibility determination. (7-1-10)T

05. Time Limits on Determinations. The Department will process each request for Medicaid eligibility determination within forty-five (45) days of receiving the request, unless prevented by events beyond the Department's control. (7-1-10)T

131. -- 139. (RESERVED).

140. NOTICE OF DECISION ON ELIGIBILITY FOR MEDICAID.

01. Denial on Request Submitted by a Hospital. If the Department determines that an applicant is not eligible for Medicaid, the Department will promptly notify the applicant and the hospital of its determination. The Department will transmit a copy of its determination and a copy of the application to the respective county clerk. The clerk will treat the copy of the Department's determination and the copy of the application as an application for financial assistance under Title 31, Chapter 35, Idaho Code. Denial of Medicaid eligibility is not a determination of medical indigency or eligibility for financial assistance under the county Medically Indigent Program or the Catastrophic Health Care Cost Program. (7-1-10)T

02. Denial on Request Submitted by a County. If the Department determines that an applicant is not eligible for Medicaid, the Department will promptly notify the applicant and the respective county clerk of its determination. Denial of Medicaid eligibility is not a determination of medical indigency or eligibility for financial assistance under the County Medically Indigent Program or the Catastrophic Health Care Cost Program. (7-1-10)T

03. Approval of Medicaid Eligibility. If the Department determines that an applicant is eligible for Medicaid, the Department will act on the request and application as an application for Medicaid and notify the applicant, hospital, and respective clerk of its determination. (7-1-10)T

04. Notification. The written notice required under this section must include: (7-1-10)T

a. The applicant's name and identifying information; (7-1-10)T

b. A statement of the decision; (7-1-10)T

c. A concise statement of the reasons for the decision; and (7-1-10)T

d. The process for pursuing an administrative appeal. (7-1-10)T

141. -- 149. (RESERVED).

150. ADDITIONAL DUTIES AND RESPONSIBILITIES OF HOSPITALS.

01. Additional Duties and Responsibilities. Each hospital submitting an application and request for Medicaid eligibility determination under these rules must: (7-1-10)T

a. Cooperate with the Department, the Board, and the respective counties of the state and contractors retained by the Board or the respective County Commissioners. (7-1-10)T

b. Assist applicants in completing an application form and request for Medicaid eligibility determination. (7-1-10)T

02. Comply with Confidentiality Laws and Rules. Each hospital must comply with IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records," and all applicable state and federal laws, rules, and regulations pertaining to the confidentiality of, and the disclosure of, information and records. (7-1-10)T

03. Comply with HIPAA. Each hospital must comply with the Health Insurance Portability and Accountability Act (HIPAA). (7-1-10)T

151. -- 159. (RESERVED).

160. ADDITIONAL DUTIES AND RESPONSIBILITIES OF COUNTIES.

01. Additional Duties and Responsibilities. Each respective county submitting an application and request for Medicaid eligibility determination under these rules must: (7-1-10)T

a. Cooperate with the Department, the Board, the hospital, and contractors retained by the Department or the Board. (7-1-10)T

b. Assist applicants in completing an application form and request for Medicaid eligibility determination. (7-1-10)T

02. Comply with Confidentiality Laws and Rules. Each respective county must comply with IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records," and all applicable state and federal laws, rules and regulations pertaining to the confidentiality of, the disclosure of, information and records. (7-1-10)T

03. Comply with HIPAA. Each respective county must comply with the Health Insurance Portability and Accountability Act (HIPAA). (7-1-10)T

161. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.11 - DEVELOPMENTAL DISABILITIES AGENCIES (DDA)

DOCKET NO. 16-0411-1001

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to the "Idaho Developmental Disabilities Services and Facilities Act of 1978," Sections 39-4601 et seq., Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

Wednesday - July 14, 2010 - 10:00 a.m.

**3232 Elder Street
Conference Room D East
Boise, ID 83705**

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

1. Attend the negotiated rulemaking meeting and participate in the negotiation process;
2. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting;
3. Submit written recommendations and comments to the address below.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The Department is proposing to rewrite this chapter of rules as part of the Children's System Redesign project. This project will restructure benefits for children with developmental disabilities under two Home and Community Based Services (HCBS) waivers (similar to that for adults) and a related State Plan option, and will eliminate current State Plan DDA services.

Negotiated rulemaking is being conducted by the Department in order to gather input from interested parties regarding certain key elements of this chapter.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Lauren Ertz at (208) 287-1169 or go to: www.redesignforchildren.medicaid.idaho.gov.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 14, 2010.

DATED this 26th day of May, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATES: The effective dates of these temporary rules are May 1, 2010, and July 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1004A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The criminal history and background check (CHC) rules provide a list of individuals and providers required to have a CHC. The CHC rules reference other Department rules and statutes requiring certain individuals to meet the CHC requirements. Currently, some of the individuals and providers listed in this chapter are not consistent with the Department rules that require the background check. In order to clarify the distinction between the Department's program rules and the Department's CHC rules, these CHC rules are being amended to reference only those Department rules that require an individual to have a criminal history and background check.

The Department's list of disqualifying crimes, and unconditional denials that prevent a person from receiving a CHC clearance is being updated. The Department is changing these rules to state that an individual listed on the Nurse Aide and Child Protection Central registries will receive unconditional denials. The 5-year disqualifying crimes list is amended to encompass additional crimes to better protect children and vulnerable adults.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of these rules are appropriate for the following reason:

To protect the safety of children and vulnerable adults from individuals who may harm them.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

There is no anticipated fiscal impact to the state general fund due to this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is necessary to protect the public health, safety, or welfare.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Bellomy (208) 334-0609.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 27th day of May, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0506-1001

010. DEFINITIONS AND ABBREVIATIONS.

01. Application. An individual's request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. (3-26-08)

02. Clearance. A clearance issued by the Department once the criminal history and background check is completed and no disqualifying crimes or relevant records are found. (3-26-08)

03. Conviction. An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.03.a. through 010.03.d. of this rule: (3-26-08)

a. When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-26-08)

b. When there has been a finding of guilt against the individual by any federal, state, military, or local court; (3-26-08)

c. When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-26-08)

d. When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: (3-26-08)

i. When the individual has entered into participation in a drug court; or (3-26-08)

ii. When the individual has entered into participation in a mental health court. (3-26-08)

04. Criminal History and Background Check. A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records ~~to determine the suitability of the individual to provide care or services to vulnerable adults or children.~~ (3-26-08)(7-1-10)T

05. Criminal History Unit. The Department's Unit responsible for processing fingerprint-based criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. (3-26-08)

06. Denial. A denial is issued by the Department when an individual has a relevant record or

disqualifying crime. There are two (2) types of denials: (3-26-08)

a. Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. (3-26-08)

b. Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime or a relevant record found in Sections 200 and 210 of these rules. ~~(3-26-08)~~(7-1-10)T

07. Department. The Idaho Department of Health and Welfare or its designee. (3-26-08)

08. Disqualifying Crime. A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. (3-26-08)

09. Exemption Review. A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)

10. Federal Bureau of Investigation (FBI). The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

11. Good Cause. ~~The facts and circumstances that would compel a reasonably prudent person to act in the same or similar manner under the same or similar circumstances~~ Substantial reason, one that affords a legal excuse. ~~(3-26-08)~~(7-1-10)T

12. Idaho State Police Bureau of Criminal Identification. The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

13. Relevant Record. A relevant record is a record that is from criminal records or from registries checked by the Department as provided in Section 56-1004A, Idaho Code, ~~that may result in a conditional denial.~~ ~~(3-26-08)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

061. EMPLOYER RESPONSIBILITIES.

The criminal history and background check clearance is not a determination of suitability for employment. The Department's criminal history and background check clearance means that an individual was found to have no disqualifying crime or relevant record. Employers are responsible for determining the individual's suitability for employment as described in Subsections 061.01 through 061.03 of these rules. (3-26-08)

01. Screen Applicants. The employer should screen applicants prior to initiating a criminal history and background check in determining the suitability of the applicant for employment. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment should be made during the initial application screening. (3-26-08)

02. Ensure Time Frames Are Met. The employer is responsible to ensure that the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. (3-26-08)

03. Employment Determination. The employer is responsible for reviewing the results of the criminal history and background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The employer must then make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults. ~~(3-26-08)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or ~~program~~ Department rules to complete a criminal history and background check.

~~(3-26-08)~~(7-1-10)T

01. Adoptive Parent Applicants. ~~All persons applying to the Department or petitioning the court to be an adoptive parent and all adults in the home, except stepparents applying for adoption of a stepchild, as described in~~ Individuals who must comply with IDAPA 16.06.01, "~~Rules Governing Child and Family and Children's Services,~~" and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing."
~~(3-29-10)~~(7-1-10)T

02. Alcohol or Substance Use Disorders Treatment Facilities and Programs. ~~Staff, contractors, volunteers, student interns, and others assigned to programs who have direct contact with children and vulnerable adults, as defined in Section 39-5302, Idaho Code, and as required by~~ IDAPA 16.06.03, "~~Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs,~~" or Individuals who must comply with IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs," and IDAPA 16.03.09, "Medicaid Basic Plan Benefits."
~~(3-29-10)~~(5-1-10)T

03. Certified Family Homes. ~~Certified family home providers, all adults in the home, and substitute caregivers, as required in~~ Individuals who must comply with Section 39-3520, Idaho Code, and IDAPA 16.03.19, "Rules Governing Certified Family Homes," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits."
~~(3-29-10)~~(7-1-10)T

04. Children's Residential Care Facilities. ~~Owners, operators, and employees of all children's residential care facilities, as required in~~ Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing."
~~(3-29-10)~~(7-1-10)T

05. Children's Therapeutic Outdoor Programs. ~~Staff, volunteers, and interns working in~~ Children's Therapeutic Outdoor Programs, as defined in Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing."
~~(3-29-10)~~(7-1-10)T

06. Commercial Non-Emergency Transportation Providers. ~~Staff of commercial non-emergency transportation providers who have contact with participants, as required in~~ Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits."
~~(3-29-10)~~(7-1-10)T

07. Designated Examiners and Designated Dispositioners. ~~Individuals seeking appointment as a designated examiner or designated dispositioner, or both, as required in~~ who must comply with IDAPA 16.07.39, "Appointment of Designated Examiners and Designated Dispositioners."
~~(3-29-10)~~(7-1-10)T

08. Developmental Disabilities Agencies. ~~Employees, subcontractors, agents, and volunteers of developmental disabilities agencies, as required in~~ Individuals who must comply with IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits."
~~(3-29-10)~~(7-1-10)T

09. Emergency Medical Services (EMS). ~~Applicants for EMS certification, as required in~~ Individuals who must comply with IDAPA 16.02.03, "Rules Governing Emergency Medical Services."
~~(3-29-10)~~(7-1-10)T

10. Home and Community-Based Services (HCBS). ~~Providers, employees, and contractors for home and community-based services, as required in~~ Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits."
~~(3-29-10)~~(7-1-10)T

11. Home Health Agencies. ~~Employees and contractors of home health agencies, as required in~~ Individuals who must comply with IDAPA 16.03.07, "Home Health Agencies."
~~(3-29-10)~~(7-1-10)T

12. Idaho Child Care Program (ICCP). ~~ICCP applicants, providers, employees, volunteers,~~

~~including those in group child care, family child care, relative child care, in-home child care, and individuals age thirteen (13) or older living in the home, who have direct contact with children, as required in~~ Individuals who must comply with IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program." ~~(3-29-10)(7-1-10)T~~

13. Intermediate Care Facilities for the Mentally Retarded (ICF/MR). ~~Employees and contractors of intermediate care facilities for the mentally retarded, as required in~~ Individuals who must comply with IDAPA 16.03.11, "Intermediate Care Facilities for the Mentally Retarded (ICF/MR)." ~~(3-29-10)(7-1-10)T~~

14. Licensed Foster Care. ~~All foster care applicants and other adult members of the household, as required in~~ Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~(3-29-10)(7-1-10)T~~

15. Licensed Day Care. ~~Applicants, owners, operators, employees, volunteers, and those over twelve (12) years of age who have unsupervised direct contact with the children of day care centers, group day care facilities and family day care homes, as required in~~ Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~(3-29-10)(7-1-10)T~~

16. Mental Health Clinics. ~~Mental health clinic's direct care staff, as required in~~ Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.03.09, "Medicaid Basic Plan Benefits." ~~(3-29-10)(7-1-10)T~~

17. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units. ~~Owners, operators, and all employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide care or services or have access to clients, as required in~~ Individuals who must comply with IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units." ~~(3-29-10)(7-1-10)T~~

18. Personal Assistance Agencies. ~~Staff of personal assistance agencies acting as fiscal intermediaries, as required in~~ Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-29-10)(7-1-10)T~~

19. Personal Care Service Providers. ~~Providers of personal care services, as required in~~ Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-29-10)(7-1-10)T~~

20. Psychosocial Rehabilitation Providers. ~~Individuals providing psychosocial rehabilitation services, as required in~~ who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-29-10)(7-1-10)T~~

21. Residential Care or Assisted Living Facilities in Idaho. ~~Employees and contractors of residential care or assisted living facilities, as required in~~ Individuals who must comply with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." ~~(3-29-10)(7-1-10)T~~

22. Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill. ~~Employees and contractors of semi-independent group residential care facilities for the developmentally disabled or mentally ill, as required in~~ Individuals who must comply with IDAPA 16.03.15, "Rules and Minimum Standards for Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill." ~~(3-29-10)(7-1-10)T~~

23. Service Coordinators and Paraprofessional Providers. ~~Service coordinators and paraprofessionals working for an agency, as required in~~ Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-29-10)(7-1-10)T~~

24. Skilled Nursing and Intermediate Care Facilities. ~~Employees and contractors of skilled nursing and intermediate care facilities, as required in~~ Individuals who must comply with IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities." ~~(3-29-10)(7-1-10)T~~

25. Support Brokers and Community Support Workers. ~~Support brokers and community support workers, as required in~~ Individuals who must comply with IDAPA 16.03.13, "Consumer-Directed Services." ~~(3-29-10)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial~~Issuance~~. Unconditional denials are issued for: (7-1-10)T

a. ~~Disqualifying crimes described in Section 210 of these rules;~~ (3-26-08)(7-1-10)T

b. A relevant record on the Idaho Child Abuse Central Registry with a Level 1 or Level 2 finding; or (7-1-10)T

c. A relevant record on the Nurse Aide Registry. (7-1-10)T

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has thirty (30) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with: ~~The Criminal History Unit, 3268 Elder Street, Boise, ID 83705~~ described in Section 005 of these rules. (3-26-08)(7-1-10)T

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. Final Order. The Department's final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152, may be appealed in District Court. (3-26-08)

201. -- 209. (RESERVED).

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

01. Disqualifying Crimes. The disqualifying crimes described in Subsections 210.01.a through 210.01.v. of these rules will result in an unconditional denial being issued. (3-26-08)

a. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code;

- (3-26-08)
- b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)
 - c.** Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)
 - d.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)
 - e.** Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
 - f.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
 - g.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
 - h.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
 - i.** Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
 - j.** Murder in any degree, ~~voluntary~~ manslaughter, assault, or battery with intent to commit a serious felony, as defined in Sections ~~18-909, 18-911,~~ 18-4001, 18-4003, 18-4006, and 18-4015, Idaho Code; ~~(3-26-08)~~(7-1-10)T
 - k.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
 - l.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)
 - m.** Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
 - n.** Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
 - o.** Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
 - p.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
 - q.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)
 - r.** Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
 - s.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
 - t.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)
 - u.** Any felony punishable by death or life imprisonment; or (3-26-08)
 - v.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-29-10)

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.~~q.~~h. of this rule: ~~(3-29-10)~~(7-1-10)T

- a.** ~~Aggravated assault, as defined in Section 18-905, Idaho Code~~ Any felony not described in

Subsection 210.01, of this rule; ~~(3-26-08)~~(7-1-10)T

- ~~b.~~ *Aggravated battery, as defined in Section 18-907(1), Idaho Code;* ~~(3-26-08)~~
- ~~c.~~ *Arson in the third degree, as defined in Section 18-804, Idaho Code;* ~~(3-26-08)~~
- ~~d.~~ *Burglary, as defined in Section 18-1401, Idaho Code;* ~~(3-26-08)~~
- ~~e.~~ *Felony computer crimes, as defined in Section 18-2202, Idaho Code;* ~~(3-29-10)~~
- ~~f.~~ *A felony involving a controlled substance;* ~~(3-26-08)~~
- ~~g.~~ *Felony domestic violence, as defined in Section 18-918, Idaho Code;* ~~(3-29-10)~~
- ~~h.~~ *Any felony lottery crime as defined in Section 67-7448, Idaho Code;* ~~(3-29-10)~~
- ~~i.~~ *Felony theft, as defined in Section 18-2403, Idaho Code;* ~~(3-26-08)~~
- ~~j.~~ Misdemeanor Forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; ~~(3-29-10)~~(7-1-10)T
- ~~k.~~ Misdemeanor Forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; ~~(3-26-08)~~(7-1-10)T
- ~~l.~~ *Grand theft, as defined in Section 18-2407(1), Idaho Code;* ~~(3-26-08)~~
- ~~m.~~ Misdemeanor fidentity theft, as defined in Section 18-3126, Idaho Code; ~~(4-9-09)~~(7-1-10)T
- ~~n.~~ Misdemeanor finsurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; ~~(3-26-08)~~(7-1-10)T
- ~~o.~~ Misdemeanor Public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; or ~~(4-9-09)~~(7-1-10)T
- ~~p.~~ *Attempted strangulation, as defined in Section 18-923, Idaho Code; or* ~~(4-9-09)~~
- ~~g.~~ Stalking in the second degree, as defined in Section 18-7906, Idaho Code. ~~(7-1-10)T~~
- ~~q.~~ Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. ~~(3-29-10)~~

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: ~~(3-26-08)~~

- a.** A withheld judgment; ~~(3-26-08)~~
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; ~~(3-26-08)~~
- c.** An order according to Section 19-2604, Idaho Code, or other equivalent state law; or ~~(3-26-08)~~
- d.** A sealed record. ~~(3-26-08)~~

(BREAK IN CONTINUITY OF SECTIONS)

230. RELEVANT RECORDS RESULTING IN A ~~CONDITIONAL~~ DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a relevant record on his record as described Subsections 230.01 and 230.02 of this rule. (3-26-08)

01. Individuals Licensed or Certified by the Department or a Department Employee. A ~~conditional~~ denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.f. of this rule: ~~(3-26-08)~~(7-1-10)T

- a. A plea, finding, or adjudication of guilt to any felony or misdemeanor, or any crime other than a traffic violation, that does not result in a suspension of the individual's driver's license; (3-26-08)
- b. A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)
- c. The Department determines there is a potential health and safety risk to vulnerable adults or children; (3-26-08)
- d. The individual has falsified or omitted information on the application form; (3-26-08)
- e. The individual is ~~listed with a finding~~ on the Nurse Aide Registry with a negative finding; or ~~(3-26-08)~~(7-1-10)T
- f. The Department determines additional information is required. (3-26-08)

02. Employees of Providers or Contractors. A ~~conditional~~ denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.02.c. of this rule. ~~(3-26-08)~~(7-1-10)T

- a. A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)
- b. The individual is ~~listed with a finding~~ on the Nurse Aide Registry with a negative finding; or ~~(3-26-08)~~(7-1-10)T
- c. The Department determines additional information is required. (3-26-08)

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a. A withheld judgment; (3-26-08)
- b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d. A sealed record. (3-26-08)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1002 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule is July 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1004A, Idaho Code, and 42 USC 16961 Section 152.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department is required to check the Idaho Child Protection Central Registry when requested by another state when an individual applies to become a foster parent or adoptive parent. Each state is required to check its child abuse registry when an individual has resided in the state within the past five years. Because of budgetary constraints, the Department is adding a fee to cover the administrative costs that occur when these checks are provided. This rule provides the guidelines and fee for an Idaho Child Protection Central Registry Check.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a)(b), Idaho Code, the Governor has found that temporary adoption of these rules are appropriate for the following reasons:

This temporary fee rule is needed to protect children from immediate danger.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

The fee amount for providing the Idaho Child Protection Central Registry checks is based on costs incurred to complete each check. The fee amount to be charged to other states is \$20 per check.

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

The Department estimates that approximately 840 registry checks will generate \$16,900 in additional revenue to the dedicated fund for SFY 2011, and will have no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is necessary to protect the public health, safety, or welfare, and to comply with governing law.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Bellomy (208) 334-0609.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 27th day of May, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0506-1002

121. -- 124. (RESERVED).

125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.

Under the provisions in 42 USC 16961 Section 152, a check of the Idaho Child Protection Central Registry may be requested by another state for foster or adoptive placement cases. (7-1-10)T

01. Request for an Idaho Child Protection Central Registry Check. A request for an Idaho Child Protection Central Registry check must be submitted by mail, facsimile transmission, or e-mail attachment on state letterhead with the requesting authority contact information, and must include the following: (7-1-10)T

a. Name of the subject of the check, and any aliases; (7-1-10)T

b. Date of birth and Social Security Number of the subject of the check; and (7-1-10)T

c. A notarized signature of the subject of the check authorizing the request. (7-1-10)T

02. Fee Amount. The fee for an Idaho Child Protection Central Registry check is twenty dollars (\$20) for each subject checked. (7-1-10)T

03. Department Response. A response will be returned to the state initiating the request for the check within fourteen (14) days of receipt of the request. The Department's contact information will be included along with the result of the check. (7-1-10)T

126. -- 129. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING
DOCKET NO. 16-0602-1001
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of these temporary rules is July 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Title 39, Chapter 11, Idaho Code, was amended to provide a statewide system for the protection of children in daycare facilities. The statutory changes were effective on January 1, 2010, and necessitate corresponding changes and clarification in this chapter of rules. The Department presented rules to the 2010 Legislature that were rejected. These rules are being published as temporary rules, in order to have rules effective on July 1, 2010, with changes to address concerns of the legislature.

These rule changes provide requirements and clarification for areas related to daycare licensing that include: safety and health standards, licensure requirements, suspension, denial, and revocation of licenses. While amending these child care licensing rules for daycare standards, other updates were made for consistency in language, clarification, deletion of obsolete language, and updating references. These amendments will help assure standards and processes to better protect the health and safety of children in child care licensed by the Department.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of children in child care and daycare, and to comply with amendments to statutes effective January 1, 2010.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

The Department estimates the anticipated cost for SFY 2011 is \$69,000. This cost will be covered by the Federal Child Care Development Funds which is 100 percent federally funded.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted this year, 2010, because extensive rulemaking negotiations were held in 2009 under Docket No. 16-0602-0901, to meet new statutory requirements effective January 1, 2010.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Landis Rossi (208) 334-5688.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 27th day of May, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0602-1001

000. LEGAL AUTHORITY.

Under Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code, the Idaho Legislature authorizes the Department of Health and Welfare and the Board of Health and Welfare to adopt and enforce rules governing standards and procedures for licensure ~~ing or certification of~~ daycare centers, group daycare facilities, family daycare homes, foster homes, children's agencies, and children's residential care facilities, children's camps, and children's therapeutic outdoor programs which are maintained or operated within Idaho.

~~(7-1-09)~~(7-1-10)T

001. TITLE, SCOPE, AND POLICY, PURPOSE, EXCEPTIONS, AND EXEMPTIONS TO LICENSING.

01. Title. The title of this chapter of rules is IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (7-1-09)

02. Scope. These rules establish minimum standards and procedures for ~~the licensure, or certification of~~ maintaining, and operating the following facilities or programs within Idaho: (7-1-10)T

- a.** Daycare centers; (7-1-10)T
- b.** Group daycare facilities; (7-1-10)T
- c.** Family daycare homes, voluntarily; (7-1-10)T
- d.** Foster homes; (7-1-10)T
- e.** Children's agencies, and; (7-1-10)T
- f.** Children's residential care facilities, including non-accredited residential schools; (7-1-10)T
- g.** Children's camps providing child care in Idaho. These standards apply for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period; (7-1-10)T

h. Children's therapeutic outdoor programs; (7-1-10)T

i. Alcohol-drug abuse treatment facilities for adolescents certified according to IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs"; and (7-1-10)T

j. facilities specializing in maternity care to for minors, daycare centers and group daycare facilities. Also included are standards and procedures for voluntary compliance for licensing of group daycare facilities and family daycare homes. (7-1-09)(7-1-10)T

03. Policy. It is the policy of the Department to assure that children of this state receive adequate substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children or the parents are seeking alternative twenty-four (24) hour long-term care for their children. This policy is based on the fact that children are vulnerable and not capable of protecting themselves. When parents, for any reason have relinquished their children's care to others, there arises the possibility of certain risks to those children's lives, health and safety which the community as a whole must protect against. This requires the offsetting statutory protection of review and, in certain instances, licensing or registration. (7-1-09)

04. Purpose. The Department issues a license to assure, as is reasonably practicable, that the care, services, and physical surroundings of each program or facility are in substantial compliance with these rules and minimum standards. (7-1-10)T

a. According to Section 39-1117, Idaho Code, a daycare license does not constitute a representation affirming to any person that the program or facility is free from risk. A daycare license does not guarantee adequacy of care, services, safety, or the well-being of any child, staff, contractor, volunteer, or visitor of a daycare facility. It is the parent's primary responsibility for evaluation and selection of daycare services. (7-1-10)T

b. The state, its employees or agents of the state or its political subdivisions, will not be liable for nor will a cause of action exist for any loss or damage based upon the failure of any daycare facility to meet the minimum standards contained in these rules. (7-1-10)T

05. Exceptions and Exemptions to Daycare Licensing. Under Section 39-1103, Idaho Code, the minimum standards and licensing requirements in these rules do not apply to: (7-1-10)T

a. Daycare facilities regulated, licensed, or certified by a city or county in accordance with local options under Section 39-1108, Idaho Code; (7-1-10)T

b. The occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily in the business of providing daycare; (7-1-10)T

c. The operation of a private school or religious school for educational purposes for children over four (4) years of age, or a religious kindergarten; (7-1-10)T

d. The provision of occasional care exclusively for children of parents who are simultaneously in the same building; (7-1-10)T

e. The operation of day camps, programs and religious schools for less than twelve (12) weeks during a calendar year or not more often than once a week; or (7-1-10)T

f. The provision of care for children of a family within the second degree of relationship as defined in Section 011 of these rules. (7-1-10)T

06. Exceptions and Exemptions to Child Care Licensing. Under Sections 39-1206, 39-1213(b), and 39-1211, Idaho Code, the minimum standards and licensing requirements in these rules do not apply to: (7-1-10)T

a. Foster homes that have been approved by a licensed children's agency provided the standards for approval by such agency are no less restrictive than the rules and standards established by the Board and that such

agency is maintained, operated, and conforms with these rules and standards: (7-1-10)T

b. The occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily engaged in child care; or (7-1-10)T

c. Children's camps which only provide child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period. A children's camp which provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period constitutes a children's residential care facility and is subject to the minimum standards and licensing requirements in these rules. (7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-11-06)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-11-06)

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

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-11-06)

05. Internet Website. The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. (4-11-06)

06. Child Care Licensing Authority Location. The Department's child care licensing authority for children's residential treatment facilities, children's agencies, and children's outdoor therapeutic programs is located at 450 West State Street, Boise, Idaho 83702; Phone (208) 334-5700. ~~(7-1-09)~~(7-1-10)T

07. Daycare Licensing Authority Location. The Department's daycare licensing authority for daycare centers, group daycare facilities, and family daycare homes is located at 450 West State Street, Boise, Idaho 83702; Phone (208) 334-5700. (7-1-10)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-11-06)

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

03. Licensure or Deficiencies Records. Under Section 9-340C(9), Idaho Code, and IDAPA 16.05.01, "Use and Disclosure of Department Records," information referring or relating to individuals, programs, or facilities subject to this chapter of rules, IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," will be released to the public upon written request if they are part of an inquiry into an individual's or organization's fitness to be granted or retain a license, certificate, permit, privilege, commission or position. These records will otherwise be provided in redacted form as required by law or rule. (7-1-10)T

007. -- 008. (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. Criminal history and background checks are required for ~~providers~~ individuals who are licensed ~~or certified~~ under these rules. ~~Providers~~ Individuals who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks," with the exception of those individuals described in Subsection 009.04 of ~~these~~ this rules. ~~(3-30-07)(7-1-10)T~~

02. When ~~Certification or~~ License is Granted. The applicant must have a completed criminal history and background check, including clearance, prior to ~~certification or~~ licensure. Any other adult living in the home must complete a ~~self-declaration form~~ criminal history application, must be fingerprinted, and must not have any ~~designated~~ disqualifying crimes listed in IDAPA 16.05.06, "Criminal History and Background Checks." ~~(3-30-07)(7-1-10)T~~

03. ~~Applicants and Providers~~ Individuals Subject to Criminal History Check Requirements. The following ~~applicants and providers~~ individuals must receive a criminal history and background check clearance prior to licensure: ~~(3-30-07)(7-1-10)T~~

a. Adoptive Parents. The criminal history and background check requirements applicable to adoptive parents are found in Subsection 671.02 of these rules. (3-30-07)

b. Child Care Facility Staff. The criminal history and background check requirements applicable to a child care facility are found in Section 109 of these rules. (3-30-07)

c. Children's Agency Facility Staff. The criminal history and background check requirements for a children's agency facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. (3-30-07)

d. Children's Residential Care Facility and Children's Camp Staff. The criminal history and background check requirements for a children's residential care facility or children's camp are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. ~~(3-30-07)(7-1-10)T~~

e. Children's Therapeutic Outdoor Program Staff. The criminal history and background check requirements for a children's therapeutic outdoor program are found in Section 810 of these rules and in Section 39-1208(8), Idaho Code. (3-30-07)

f. Daycare Center, Group Daycare Facility, Staff and Family Day Care Home. The criminal history and background check requirements applicable to ~~licensed a daycare providers center, group daycare facility, and family daycare home~~ are found in Section ~~4309~~ of these rules and in Sections 39-1105, 39-1113, and 39-1114, Idaho Code. ~~(3-30-07)(7-1-10)T~~

g. Licensed Foster Care Home. The criminal history and background check requirements applicable to licensed foster care are found in Section 404 of these rules and in Section 39-1211(4), Idaho Code. (3-30-07)

04. Exceptions to Criminal History and Background Checks for Certain Youths. Criminal history and background checks are optional for certain youth placed in licensed foster homes and licensed residential care facilities. ~~(3-30-07)(7-1-10)T~~

a. Youth in foster care who reach the age of eighteen (18) and continue to reside in the same licensed foster home. (3-30-07)

b. Youth in a children's residential care facility who reach the age of eighteen (18) and continue to live in the same licensed residential facility. (3-30-07)

05. Criminal History and Background Check at Any Time. The Department can require a criminal history and background check at any time on any individual who: ~~(7-1-10)T~~

- a.** ~~Is a permanent resident of or an adult living in~~ a licensed foster home ~~or~~; (7-1-10)T
- b.** ~~Is a resident or adult living in, employee, contractor, volunteer, or staff member of a licensed residential facility;~~ ~~or~~ (7-1-10)T
~~(3-30-07)~~
- c.** ~~Is an owner, operator, or staff of a daycare center, group daycare facility, family daycare home, and all other individuals who are thirteen (13) years of age or older who have unsupervised direct contact with children or who are regularly on the premises.~~ (7-1-10)T

010. DEFINITIONS A THROUGH M.

For the purposes of these rules, the following terms apply. (7-1-09)

01. Accredited Residential School. A residential school for any number of children subject to the jurisdiction of the Idaho Department of Education that has been certified as accredited according to the accrediting standards promulgated by the Idaho State Board of Education or a secular or religious accrediting association recognized by the Idaho Department of Education. (3-30-01)

02. Alcohol-Drug Abuse Treatment Facility. A children's residential care facility specializing in providing programs of treatment for children whose primary problem is alcohol or drug abuse, certified according to IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs." ~~(3-30-01)~~(7-1-10)T

03. Attendance. For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, "attendance" means the number of children present at a daycare facility at any given time. (7-1-10)T

034. Board. The Idaho State Board of Health and Welfare. (3-30-01)

045. Chief Administrator. The duly authorized representative of an organization responsible for day-to-day operations, management and compliance with these rules and Title 39, Chapter 12, Idaho Code. (7-1-09)

056. Child. (7-1-10)T

a. For requirements of Title 39, Chapter 12, Idaho Code, and Sections 400 through 999 of these rules, "child" means an individual less than eighteen (18) years of age, synonymous with juvenile or minor. ~~(3-30-01)~~(7-1-10)T

b. For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, "child" means an individual less than thirteen (13) years of age. (7-1-10)T

067. Child Care. The care, control, supervision or maintenance of children for twenty-four (24) hours a day which is provided as an alternative to parental care. (3-30-01)

08. Child-Staff Ratio. "Child-staff ratio" means the maximum number of children allowed under the care and supervision of one (1) staff person. (7-1-10)T

079. Children's Agency. A person who operates a business for the placement of children in foster homes, children's residential care facilities or for adoption in a permanent home and who does not provide child care as part of that business. A children's agency does not include a licensed attorney or physician assisting or providing natural and adoptive parents with legal services or medical services necessary to initiate and complete adoptive placements. (3-30-01)

0810. Children's Camp. A program of child care at a location away from the child's home, which is primarily recreational and includes the overnight accommodation of the child and is not intended to provide treatment, therapy or rehabilitation for the child. A children's camp which only provides child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period is exempt from the licensure and disclosure provisions of this chapter. A children's camp which provides child care for any one (1) child for more than nine (9)

consecutive weeks in any one (1) year period constitutes a children's residential care facility. (7-1-09)

~~0911.~~ **Children's Institution.** A person defined herein, who operates a residential facility for unrelated children, for the purpose of providing child care. Children's institutions include foster homes, children's residential care facilities, maternity homes, or any residential facility providing treatment, therapy or rehabilitation for children, or any children's therapeutic outdoor program. (5-3-03)

~~102.~~ **Children's Residential Care Facility.** A facility that provides residential child care, excluding foster homes, residential schools, juvenile detention centers and children's camps that: (3-30-01)

a. Seeks, receives or enrolls children for treatment of special needs such as substance abuse, mental illness, emotional disturbance, developmental disability, mental retardation, or children who have been identified by the judicial system as requiring treatment, therapy, rehabilitation or supervision; (3-30-01)

b. Receives payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; or (3-30-01)

c. Represents to the payor of the child care services provided by the children's facility that such payment may qualify for health insurance reimbursement by the payor's carrier or may qualify for tax benefits relating to medical services; and (5-3-03)

d. May include a children's therapeutic outdoor program whether or not that program operates out of a standard facility. (5-3-03)

~~143.~~ **Children's Therapeutic Outdoor Program.** A program which is designed to provide behavioral, substance abuse, or mental health services to minors in an outdoor setting and serves either adjudicated or non-adjudicated youth. Children's Therapeutic Outdoor programs do not include outdoor programs for minors that are primarily designed to be educational or recreational that may include Boy Scouts, Girl Scouts, 4-H and other youth organizations. (5-3-03)

~~124.~~ **Continued Care.** The ongoing placement of an individual in a foster home, children's residential care facility, children's therapeutic outdoor program, or transitional living placement who reaches the age of eighteen (18) years but is less than twenty-one (21) years of age. (7-1-09)

~~135.~~ **Contraband.** Goods or merchandise, the possession of which is prohibited, such as weapons and drugs. (3-30-01)

~~146.~~ **Daycare.** The care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood, ~~or marriage, adoption, or legal guardianship~~ to the person or persons providing the care, in a place other than the child's or children's own home or homes. ~~(3-30-01)~~(7-1-10)T

~~157.~~ **Daycare Center.** A place or facility providing daycare ~~for compensation for where~~ thirteen (13) or more children, ~~regardless of relationship to the person or persons providing the care, are in attendance.~~ ~~(3-30-01)~~(7-1-10)T

~~18.~~ **Daycare Facility.** A place or facility providing daycare where seven (7) or more children, ~~regardless of relationship to the person or persons providing the care, are in attendance.~~ (7-1-10)T

~~169.~~ **Department.** The Idaho Department of Health and Welfare ~~or its designee.~~ ~~(7-1-09)~~(7-1-10)T

~~1720.~~ **Direct Care Staff.** An employee who has direct personal interaction with children in the provision of child care and is included as staff in meeting the minimum staff-child ratio requirements. (3-30-01)

~~1821.~~ **Director.** Director of the Idaho Department of Health and Welfare or designee. (3-30-01)

~~1922.~~ **Family Daycare Home.** A home, place, or facility providing daycare ~~for where~~ six (6) or fewer

children, ~~during part of a twenty-four (24) hour day~~ regardless of relationship to the person or persons providing the care, are in attendance. ~~(3-30-01)(7-1-10)T~~

203. Foster Care. The twenty-four (24) hour substitute parental care of children by persons who may or may not be related to a child. (7-1-09)

214. Foster Home. The private home of an individual or family licensed or approved as meeting the standards for foster care and providing twenty-four (24) hour substitute parental care to six (6) or fewer children. (7-1-09)

225. Foster Parent. A person or persons residing in a private home under their direct control to whom a foster care license ~~or certification~~ has been issued. ~~(3-30-01)(7-1-10)T~~

236. Group Daycare Facility. A home, place, or facility providing daycare ~~for~~ where seven (7) to twelve (12) children, regardless of relationship to the person or persons providing the care, are in attendance. ~~(3-30-01)(7-1-10)T~~

247. Inter-Country Adoption. The placement of a child from one (1) country to another for the purpose of adoption. (3-30-01)

~~**25. Licensing Authority.** The Department's child care licensing unit responsible for licensure or certification of Children's Residential Treatment Facilities, Children's Agencies, and Children's Outdoor Therapeutic Program. (7-1-09)~~

268. Mechanical Restraint. Devices used to control the range and motion of an individual, including handcuffs, restraint boards, restraint chairs, and restraint jackets. (3-30-01)

279. Medical Professionals. Persons who have received a degree in nursing or medicine and registered nurse, nurse practitioner, physician's assistant and medical doctor. (3-30-01)

2830. Member of the Household. Any person, other than a foster child, who resides in, or on the property of, a foster home. (3-30-01)

011. DEFINITIONS N THROUGH Z.
For the purposes of these rules, the following terms apply. (7-1-09)

01. Nonaccredited Residential School. A residential school for any number of children that is not certified or accredited pursuant to Section 39-1207, Idaho Code, or has lost accreditation and is subject to the jurisdiction of the Department as a children's residential care facility pursuant to Section 39-1210, Idaho Code, unless and until accreditation is certified by the Idaho Department of Education. (3-30-01)

02. Non-Compliance. Violation of, or inability to meet the requirements of, the act or a rule promulgated under the act, or terms of licensure. (3-30-01)

03. Operator. An individual who operates or maintains within Idaho a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's agency, children's therapeutic outdoor program, or children's camp. (7-1-10)T

034. Organization. A children's agency or a children's residential care facility. (3-30-01)

045. Person. Any individual, group of individuals, associations, partnerships or corporations. (3-30-01)

056. Physical Intervention. Physical restraint utilized to control the range and motion of an individual. (3-30-01)

067. Placement. The activities and arrangements related to finding a suitable licensed home or facility in which a child will reside for purposes of care, treatment, adoption, or other services. (3-30-01)

078. Plan of Correction. The detailed procedures and activities developed between the licensing authority and caregiver required to bring a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster family, children's residential care facility, ~~or~~ children's agency, children's therapeutic outdoor program, or children's camp into conformity with these licensing rules. ~~(3-30-01)~~(7-1-10)T

09. Regularly on the Premises. For the purposes of Sections 009 and 309 of these rules, regularly on the premises means twelve (12) hours or more in any one (1) month, or daily during any hours of operation. (7-1-10)T

0810. Relative. ~~Individuals related to a child by blood, marriage or adoption~~ Under Section 39-1202, Idaho Code, "relative" means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling, and half-sibling. ~~(3-30-01)~~(7-1-10)T

0911. Representative. An employee of the Department of Health and Welfare. (3-30-01)

102. Residential School. A residential facility for any number of children which: (3-30-01)

a. Provides a planned, scheduled, regular, academic or vocational program for students in the elementary, middle or secondary grades as defined in Section 33-1001, Idaho Code; and (3-30-01)

b. Provides services substantially comparable to those provided in nonresidential public schools where the primary purpose is the education and academic pursuits of the students; and (3-30-01)

c. Does not seek, receive or enroll students for treatment of such special needs as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; and (3-30-01)

d. Does not receive payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability, or mental retardation; and (3-30-01)

e. Does not represent to the payor of child care services provided that such payment may qualify for health insurance reimbursement by the payor's carrier or may qualify for tax benefits relating to medical services. (3-30-01)

113. Restraint. Interventions to control the range and motion of a child. (3-30-01)

124. Seclusion. A room within a facility designed to temporarily isolate an individual in order to gain emotional or physical control by means of structure and minimal stimulation. (3-30-01)

15. Second Degree of Relationship. The second degree of relationship refers to persons related consanguineally ("blood relative") and affinally ("relative by marriage") and includes their spouses. The number of degrees between two (2) relatives is calculated by summing the number of ties between each relative and the common ancestor. (7-1-10)T

136. Secure. A physically restrictive setting, as in a locked or guarded residential facility. (3-30-01)

147. Security Risk. An individual who presents the possibility by actions, behavior or emotional reaction that may result in harm to self or others, or escape from physical control. (3-30-01)

158. Service Worker. An employee of an organization who has obtained at a minimum, a Bachelor's degree in a behavioral science, including social work, sociology, psychology, criminal justice, counseling, or a related field, whose duties may include assessment, service planning, supervision and support. (7-1-09)

169. Shelter Care. The temporary or emergency out-of-home care of children in a foster home or residential facility. (3-30-01)

~~17~~**20.** **Social Worker.** An individual licensed by the state of Idaho in compliance with Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." (7-1-09)

~~18~~**21.** **Soft Restraints.** Mechanical restraints made of leather, cloth or other combinations of fibers, utilized to control the range of motion of an individual. (3-30-01)

22. **Staff.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, "staff" means a person who is sixteen (16) years of age or older and employed by a daycare owner or operator to provide care and supervision at a daycare facility. (7-1-10)T

23. **Supervision.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, supervision is defined as within sight and normal hearing range of the child or children being cared for. (7-1-10)T

~~19~~**24.** **Time-Out.** Separation of a child from group activity as a means of behavior management. (3-30-01)

205. **Training.** The preparation, instruction and education related to child care that increases the knowledge, skill and abilities of a foster parent, agency and residential care facility staff or volunteers. (3-30-01)

~~21~~**6.** **Transitional Living.** Living arrangements and aftercare services for children, or as continued care, to gain experience living on their own in a supportive and supervised environment prior to emancipation. (3-30-01)

227. **Variance.** The means of complying with the intent and purpose of a child care licensing rule in a manner acceptable to the Department other than that specifically prescribed in the rule. (7-1-09)

238. **Waiver.** The non-application of a child care licensing rule, except those related to safety, extended to a relative foster home by the licensing authority which serves to promote child health, well-being, and permanence while not compromising safety. (7-1-09)

012. -- 099. (RESERVED).

LICENSING AND CERTIFICATION
(Sections 100 through 299)

100. LICENSING AND CERTIFICATION.

The purpose of licensing *and certification* is to set minimum standards and to monitor compliance. Persons applying for licensure need to be physically and emotionally suited to protect the health, safety and well-being of the children in their care. Physical surroundings must present no hazards to the children in care. (7-1-09)(7-1-10)T

~~01.~~ **Local Option.** *If a city or county, within its respective jurisdiction, has adopted and is enforcing ordinances for regulating or licensing of daycare services which are at least as stringent as those contained in Subsections 300.01 through 300.15 of these rules, then those provisions of Section 39-1108, Idaho Code, will not apply within such city or county, unless the ordinance is subsequently repealed or is no longer enforced.* (7-1-09)

~~02.~~ **Exemptions From Licensing.** *Under Sections 39-1103 and 39-1211, Idaho Code, the occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily engaged in child care is exempt from licensure requirements for daycare and foster homes. Foster homes which have been certified by a licensed children's agency are exempt from licensure requirements, provided the standards for approval by such agency are at least as stringent as the rules and standards established by the Board and that such agency is maintained and operated in conformity with the rules and standards of the Board under Section 39-1213(b), Idaho Code.* (7-1-09)

~~03~~**1.** **Responsibilities of the Foster Parent or Operator.** A foster parent or operator must conform to the terms of the license *or certification.* *In addition:* (3-30-01)(7-1-10)T

~~04~~**2.** **Responsible for Knowledge of Standards.** The foster parent or operator is responsible for

knowing the standards and rules applying to the type of foster home, children's residential care facility, ~~or~~ children's agency, children's therapeutic outdoor program, children's camp, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, covered by the license ~~or certification~~, and for conforming to them at all times; ~~and~~. (3-30-01)(7-1-10)T

b03. Responsible for Agency Staff Knowledge. The operators of a child care facilities ~~and~~ or agencies ~~are~~ is responsible for ensuring that all staff members are familiar with the applicable rules governing the children's residential care facility, children's therapeutic outdoor program, ~~or~~ children's agency, children's camp, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department. A copy of these rules are available from the Office of the Administrative Rules Coordinator, 650 W. State Street, Boise ID 83720, or on the Office of the Administrative Rules Coordinator's website, <http://adm.idaho.gov/adminrules/>; ~~and~~. (7-1-09)(7-1-10)T

e04. Return of License. The foster parent or operator must immediately return his license ~~or certification~~ to the Department under any of the following circumstances: (3-30-01)(7-1-10)T

- ia.** Changes of management or address; ~~or~~ (3-30-01)(7-1-10)T
- ib.** Upon suspension or revocation of the license ~~or certification~~ by the Department; or (3-30-01)(7-1-10)T
- ic.** Upon voluntary discontinuation of service. (3-30-01)

101. APPLICATIONS FOR LICENSE ~~OR CERTIFICATION~~.

~~An~~ Applications for a license ~~or certification are to~~ must be submitted ~~and action is to be initiated on all applications within thirty (30) days after receipt, that addresses each requirement for the particular type of home, facility or agency to the Department.~~ Licensing ~~and certification~~ studies will follow the format of these rules and will contain a specific recommendation regarding the terms of the license ~~or certification~~. All foster homes, children's agencies, children's therapeutic outdoor programs, children's camps, daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, and children's residential care facilities must also comply with applicable Idaho city and county ordinances. (7-1-09)(7-1-10)T

01. Sanitation Inspection. ~~The applicant must request and obtain a sanitation inspection and written report from the applicable Idaho Public Health District.~~ (7-1-09)

02. Fire Inspection. ~~The applicant must request and obtain a fire safety inspection and written report from the office of the Idaho State Fire Marshall or local fire department.~~ (7-1-09)

03. Corrective Action and Fees. ~~The applicant must correct all deficiencies noted in the sanitation and fire reports, in order to provide documentation that the applicant has passed the inspections, and is responsible to pay any fees charged.~~ (7-1-09)

04. Planning and Zoning. ~~The applicant must provide documentation demonstrating it meets planning and zoning requirements of the applicable Idaho city or county.~~ (7-1-09)

102. DISPOSITION OF APPLICATIONS.

The Department will initiate action on each completed application within thirty (30) days after receipt that addresses each requirement for the specific type of home, facility, or agency. Upon receipt of a completed application and study, the licensing authority will review the materials for conformity with these rules. (7-1-09)(7-1-10)T

01. Approval of Application. A license ~~or certification~~ will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential facility, children's therapeutic outdoor program, children's camp, or children's agency found to be in conformity with these rules governing the home or facility. The license ~~or certification~~ is issued according to the terms specified in the licensing ~~or certification~~ study and will be mailed to the applicant. (7-1-09)(7-1-10)T

02. Regular License. A regular license ~~or certification~~ will be issued to any daycare ~~or~~ center, group

daycare ~~facility, family daycare home voluntarily licensed by the Department,~~ foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency found to be in conformity with these rules governing the facility and will specify the terms of licensure ~~or certification,~~ such as: ~~(7-1-09)~~(7-1-10)T

- a. Full time or daycare; (3-30-01)
- b. The number of children who may receive care at any one (1) time; and (3-30-01)
- c. Age range and gender, if there are conditions in the foster home or children's residential care facility making such limitations necessary; (3-30-01)
- d. The regular license ~~or certification~~ for a foster homes, children's agencies, and twenty-four (24) hour a day child care children's residential care facilities, will be children's therapeutic outdoor program, or children's camp is in effect for one (1) year from the date of issuance unless suspended or revoked earlier; ~~(7-1-09)~~(7-1-10)T
- e. A regular license ~~or certification~~ for a daycare and center, group daycare facility, or family daycare home voluntarily licensed by the Department is in effect for two (2) years from the date of issuance unless suspended or revoked earlier; and ~~(7-1-09)~~(7-1-10)T
- f. If the license for a foster home is for a specific child only, the name of that child will be shown on the foster home license. (3-30-01)

03. Waiver. A regular license ~~or certification~~ may be issued to the foster home of a relative who has received a waiver of licensing rules provided: ~~(7-1-09)~~(7-1-10)T

- a. The waiver is considered on an individual case basis; (3-30-01)
- b. The waiver is approved only for non-safety foster care rules; (7-1-09)
- c. All other licensing ~~or certification~~ requirements have been met; ~~(3-30-01)~~(7-1-10)T
- d. The approval of a waiver of any foster home rules requires the licensing authority to document a description of the reasons for issuing a waiver, the rules being waived, and assurance that the waiver will not compromise the child's safety; and (7-1-09)
- e. The approved waiver must be reviewed for continued need and approval at regular intervals not to exceed six (6) months. (7-1-09)

04. Variance. A regular license ~~or certification~~ will be issued to a foster home, children's residential care facility or children's agency approved for a variance of a licensing rule provided: ~~(3-30-01)~~(7-1-10)T

- a. The variance is considered on an individual case basis; (3-30-01)
- b. The variance is approved for a non-safety licensing rules; (3-30-01)
- c. The approval of a variance must have no adverse effect on the health, safety, and well-being of any child in care at the foster home or facility; (7-1-09)
- d. The approval of a variance is documented by the licensing agency and includes a description of the reasons for issuing a variance and assurances that the variance will not compromise any child's health, safety, and well-being; and (7-1-09)
- e. The approved variance must be reviewed for continued need and approval annually. (7-1-09)

05. Provisional License ~~or Certification.~~ A provisional license ~~or certification~~ may be issued to a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home,

children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency when a licensing standard cannot be met but can be expected to be corrected within six (6) months, provided this does not affect the health, safety and well-being of any child in care at the home or facility. (3-30-01)(7-1-10)T

a. A provisional license ~~or certification~~ will be in effect for not more than six (6) months. (3-30-01)(7-1-10)T

b. Only one (1) provisional license ~~or certification~~ will be issued to a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, ~~or children's residential care facility, children's agency, or a children's therapeutic outdoor program, or children's camp~~ in any twelve-month period of time under Sections 39-1216, ~~Idaho Code,~~ and ~~for daycare facilities defined in Section~~ 39-1102, Idaho Code. (7-1-09)(7-1-10)T

06. Limited License. A limited license for a foster home may be issued for the care of a specific child in a home which may not meet the requirements for a license, provided that: (3-30-01)

a. The child is already in the home and has formed strong emotional ties with the foster parents; and (3-30-01)

b. It can be shown that the child's continued placement in the home would be more conducive to their welfare than would removal to another home. (3-30-01)

07. Denial of Application. In the event that an application is denied, a signed letter will be sent directly to the applicant by registered or certified mail, advising the applicant of the denial and stating the basis for such denial. An applicant whose application has been denied may not reapply until after one (1) year has elapsed from the date on the denial of application. (7-1-09)(7-1-10)T

08. Failure to Complete Application Process. (7-1-09)

a. Failure of the applicant to complete the application process within six (6) months of the original date of application will result in a denial of the application. (7-1-09)

b. An applicant whose application has been denied for being incomplete may not reapply until after one (1) year has elapsed from the date on the denial of application. (7-1-09)

103. RESTRICTIONS ON APPLICABILITY AND NONTRANSFER.

01. Issued License. A ~~child-care~~ license ~~or certification~~ applies only to the foster home, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, or the person and premises designated. Each license is issued in the name of the individual, firm, partnership, association, corporation, or governmental unit identified on the application and only to a specified address of the facility or program stated in the application for the period and services specified. A license issued in the name of a foster parent, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's agency applies only to the services specified in the license ~~or certification~~. Any change in management or address renders the license ~~or certification~~ null and void, and the foster parent or operator must immediately return the license ~~or certification~~ to the licensing agency as required in Section 100 of these rules. (3-30-01)(7-1-10)T

02. Nontransferable. A license is nontransferable or assignable from one (1) individual to another, from one (1) business entity or governmental unit to another, or from one (1) location to another. (7-1-10)T

03. Change in Ownership, Operator, or Location. When there is a change in ownership, operator, or a change in location occurs, the facility or program must reapply for a license as required in Section 101 of these rules. The new owner or operator must obtain a license before starting operations. (7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

105. REVISIT; ~~AND RELICENSE AND RECERTIFICATION.~~

Revisit; ~~and~~ relicense; ~~and re-certification~~ studies will document how the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency continues to meet the standards for licensing. Consideration must be given to each point of the standards, including a review of the previous study and original application to determine what changes have occurred. An application for renewal of a license ~~or certification~~ must be made by the operator on the form furnished by the Department, and filled out prior to the expiration date of the license ~~or certification~~ currently in force. When such application for renewal has been made in the proper manner and form, the existing license ~~or certification~~ will, unless officially revoked, remain in force until the Department has acted on the application for renewal. (7-1-09)(7-1-10)T

106. COMPLAINTS AGAINST DAYCARE CENTERS, GROUP DAYCARE FACILITIES, FAMILY DAYCARE HOMES, FOSTER HOMES, CHILDREN'S RESIDENTIAL CARE FACILITIES, CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS, CHILDREN'S CAMPS, AND CHILDREN'S AGENCIES.

01. Investigation. The Department will investigate complaints regarding daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, foster homes, children's residential care facilities, children's therapeutic outdoor programs, children's camps, or children's agencies. The investigation may include further contact with the complainant, scheduled or unannounced visits to the children's residential care facility, foster home, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's agency, collateral contacts including interviews with the victim, parents or guardian, children's residential care facility or children's agency administrator, operator, staff, consultants, children in care, other persons who may have knowledge of the complaint, and inspections by fire or health officials. (7-1-10)T

02. Informed of Action. If an initial preliminary investigation indicates that a more complete investigation must be made, the foster parents, operator, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency will be informed of the investigation, and any action to be taken, including referral for civil or criminal action. (7-1-09)(7-1-10)T

107. SUSPENSION FOR CIRCUMSTANCES BEYOND CONTROL OF FOSTER PARENT OR OPERATOR.

When circumstances occur over which the foster parent or operator has no control including illness, epidemics, fire, flood, or contamination, which temporarily place the operation of the foster home, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency out of conformity with Idaho law or with these rules, the license ~~or certification~~ must be suspended until the nonconformity is remedied. (7-1-09)(7-1-10)T

108. SUSPENSION OR REVOCATION FOR INFRACTIONS.

A license ~~or certification~~ may be suspended for infractions of these rules. Such suspension may lead to revocation if the foster parent or operator fails to satisfy the Director that the infractions have been corrected sufficiently to assure conformity with the rules. (7-1-09)(7-1-10)T

109. NON-RENEWAL, DENIAL, REVOCATION, OR SUSPENSION OF LICENSE—~~OR CERTIFICATION.~~

If, upon investigation, it is found that an applicant, foster parent, or operator has failed or refused to comply with any of the provisions of the Basic Daycare License Law, Sections 39-1101 through 39-11720, Idaho Code, or the Child Care Licensing Reform Act, Sections 39-12081 through 39-1224, Idaho Code, or with these rules, or with any provision of the license ~~or certification~~, the Director may deny, suspend, revoke, or not renew a license ~~or certification~~. The Department may also deny, suspend, revoke, or ~~not renew~~ deny renewal of a license ~~or certification~~ for any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, child

care facility, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, or foster home when any of the following in Subsection 109.01 and 109.02 of this rule is determined;
(7-1-09)(7-1-10)T

01. Criminal Conviction or Relevant Record. Anyone providing direct care or working onsite under these rules is denied clearance or refuses to comply with the requirements in IDAPA 16.05.06, "Criminal History and Background Checks."
(7-1-09)(7-1-10)T

02. Other Misconduct. The applicant, foster parent, operator, or the person proposed as chief executive officer except for daycare facilities;
(3-30-01)(7-1-10)T

a. Fails to furnish any data, statistics, records or information requested by the Department without good cause or provides false information; (3-30-01)

b. Has been found guilty of or is under investigation for fraud, deceit, misrepresentation or dishonesty associated with the operation of a children's residential care facility or children's agency; (3-30-01)

c. Has been found guilty of or is under investigation for the commission of any felony; (3-30-01)

d. Has failed to exercise fiscal accountability toward a client or the Department regarding payment for services; or (3-30-01)

e. Has knowingly permitted, aided or abetted the commission of any illegal act on the premises of the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency.
(7-1-09)(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

111. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENTS OR CHILDREN.

The Department may summarily suspend a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's agency, children's therapeutic outdoor program, children's camp, or a children's residential care facility license and require the program to transfer residents or children when the Department has determined a resident's or child's health and safety are in immediate jeopardy. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, will not be transported from the facility, instead the parent or legal guardian will be contacted.
(7-1-09)(7-1-10)T

112. ENFORCEMENT REMEDY REVOCATION OF LICENSE AND TRANSFER OF RESIDENTS OR CHILDREN.

The Department may revoke the license of a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's agency, children's therapeutic outdoor program, or children's residential care facility when the Department determines the provider operator is not in compliance with these rules. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, will not be transported from the facility, instead the parent or legal guardian will be contacted. Revocation and transfer of residents or children may occur under the following circumstances:;
(7-1-09)(7-1-10)T

01. Endangers Health or Safety. Any condition that endangers the health or safety of any resident or child.
(7-1-09)(7-1-10)T

02. Not in Substantial Compliance. A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility is not in substantial compliance with these rules.
(7-1-09)(7-1-10)T

03. No Progress to Meet Plan of Correction. A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted a plan of correction. ~~(7-1-09)~~(7-1-10)T

04. Repeat Violations. Repeat violations of any requirement of these rules or provisions of Title 39, Chapters 11 and 12, Idaho Code. ~~(7-1-09)~~(7-1-10)T

05. Misrepresented or Omitted Information. A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility has knowingly misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate license. ~~(7-1-09)~~(7-1-10)T

06. Refusal to Allow Access. Refusal to allow Department representatives full access to the foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility and its grounds facilities and records. ~~(7-1-09)~~(7-1-10)T

07. Violation of Terms of Provisional License. A children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility that has violated any of the terms or conditions of a provisional license. ~~(7-1-09)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

300. STANDARDS FOR DAYCARE.

01. Purpose. ~~The stated legislative purpose of Sections 39-1101 through 39-1117, Idaho Code, is to provide for minimum statewide daycare licensing for children less than twelve (12) years of age. Persons with certain criminal backgrounds are prohibited from working in daycare centers. Responsibilities for regulatory authority are divided between the Board, the state fire marshal, and the public health districts. As stated in Section 39-1101, Idaho Code: "It is declared to be the policy of the state to establish a minimum statewide system for the protection of children in daycare centers. This system is intended to establish minimum standards, while still leaving primary responsibility for evaluation and selection of daycare services with parents. The minimum standards established by this chapter are not to be construed as preempting more stringent regulation by county or city ordinance."~~ **Daycare Standards.** In addition to meeting the rules and minimum standards required in Sections 000 through 199 of these rules, each owner, operator, or applicant seeking licensure from the Department as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must also meet the requirements under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules. ~~(4-9-09)~~(7-1-10)T

02. Fee Charged. ~~Fees are charged at the time of initial application for a basic daycare license or certification. The fees will be used to cover the expenses for fire inspections, health inspections and criminal history and background checks. The initial inspection fees are non-refundable. Basic daycare licenses and certifications are valid for a period of two (2) years.~~ **Minimum Age of Applicant.** An individual, submitting an application to the Department to be licensed for a daycare center, group daycare facility, or family daycare home, must be a minimum of eighteen (18) years of age. ~~(4-9-09)~~(7-1-10)T

a- ~~Fees will also be charged at the time of application for renewal of a license or certification. An application for renewal must be filed every two (2) years prior to the expiration of a current basic daycare license or certification in order for the current license or certification to remain valid, pending the completion of the appropriate inspections. Application and inspection fees for renewal are non-refundable.~~ ~~(4-9-09)~~

b- ~~Fees for initial inspection and renewal of basic daycare licenses and certifications must be paid~~

~~directly to the inspecting fire and health agencies. The criminal history check fees and application fee for renewal must be paid directly to the Department.~~ (4-9-09)

~~e. The applicable license fee payable to the Department upon initial application or a renewal will be reduced for any daycare facility which provides evidence that at least fifty percent (50%) of its staff is certified in infant/child first aid and cardiopulmonary resuscitation.~~ (4-9-09)

~~i. To receive such refund of monies paid to the Department for licensure or renewal, the applicant or owner/operator of such daycare facility must submit to the Department daycare licensing unit, at any time during the period of a valid license or certificate for daycare, written documentation of the number of staff in the daycare facility and that at least fifty percent (50%) of that staff is certified in infant/child first aid and cardiopulmonary resuscitation.~~ (4-9-09)

~~ii. Upon receipt of valid documentation that fifty percent (50%) of the staff of that daycare facility is so certified, a payment equal to twenty-five percent (25%) of the licensing fee paid will be made to the applicant or owner/operator of such licensed daycare facility.~~ (4-9-09)

~~03. Initial Application Fees for Basic Daycare License. All unlicensed and previously licensed daycare centers caring for thirteen (13) or more children are required to submit an initial application for a basic daycare license. The maximum fees for both unlicensed and previously licensed centers cannot exceed one hundred dollars (\$100) for a state license.~~ (4-9-09)

~~a. The following fees will be included with the initial application for a basic daycare license:~~ (3-30-01)

~~i. Health Inspection—thirty five dollars (\$35) payable to the Health District;~~ (3-30-01)

~~ii. Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; and~~ (3-30-01)

~~iii. Criminal History Check—forty five dollars (\$45) for the criminal history check will be charged for each licensing applicant and is separate from the application fees for health and fire inspections. The fees for criminal history checks are the responsibility of the individual or daycare center with which they are associated~~ (4-9-09)

~~b. Posting of license in a conspicuous place at the daycare center is required.~~ (3-30-01)

~~e. The Department obtains a criminal history check on only those applicants, owners, operators, employees or volunteers who have direct contact with the children in care and on all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. "Volunteers" when used in this chapter means only those persons who have direct unsupervised contact with children in care for more than twelve (12) hours in any one (1) month.~~ (4-9-09)

~~04. Application Fees for Renewal of Basic Daycare License. A basic daycare license must be renewed every two (2) years. The application fee for renewal of a license cannot exceed sixty dollars (\$60). The following fees will be included with an application for renewal of a basic daycare license:~~ (4-9-09)

~~a. Department—ten dollars (\$10) payable to the Department;~~ (3-30-01)

~~b. Health Inspection—thirty dollars (\$30) payable to the Health District; and~~ (3-30-01)

~~e. Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency.~~ (3-30-01)

~~d. It will be the responsibility of the applicant, owner, or operator of a daycare center to ensure that a criminal history check is initiated within ten (10) days for staff having direct contact with children to include employees and volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct~~

~~contact with children in care. (3-30-01)~~

~~**05. Initial Application Fees for Certification.** All unlicensed and previously licensed group daycare facilities caring for seven (7) to twelve (12) children are not required to be licensed but must be certified by obtaining a fire inspection and criminal history check for applicant and staff. (4-9-09)~~

~~**a.** The following fees shall be included with the initial application for a state certification: (3-30-01)~~

~~**i.** Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; (3-30-01)~~

~~**ii.** Criminal History Check—fifty-five dollars (\$55) will be charged for each certification applicant, owner, operator, employee or volunteer at the group daycare facility requiring a criminal history check and is separate from the application fee for a fire inspection and is the responsibility of the individual or group daycare facility. (4-9-09)~~

~~**b.** The fire inspection certification and verification of the required criminal history check must be available for inspection on the premises. (4-9-09)~~

~~**e.** The Department obtains a criminal history check on only those applicants, owners, operators, employees, or volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. (4-9-09)~~

~~**06. Application Fee for Renewal of Certification.** A certification must be renewed every two (2) years. The application fee for renewal of a certification will not exceed thirty dollars (\$30). The following fees will be included with the application for renewal of certification: (4-9-09)~~

~~**a.** Department—ten dollars (\$10) payable to the Department; and (3-30-01)~~

~~**b.** Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)~~

~~**e.** It will be the responsibility of the applicant, owner or operator of a group daycare facility to ensure that any employees and volunteers having direct contact with children have, upon employment or assignment, a criminal history check initiated within ten (10) days for staff. (3-30-01)~~

~~**07. Voluntary Compliance by Group Daycare Facilities for Basic Daycare License.** A group daycare facility may elect voluntarily to secure a basic daycare license and must meet the same requirements as for daycare centers. Group daycare facilities wishing to apply for a basic daycare license must comply in all cases with the requirements of a fire inspection, health inspection and criminal history check. Group daycare facilities electing to secure a basic daycare license will be charged the same fees as for daycare centers. (4-9-09)~~

~~**08. Family Daycare Homes.** Family daycare homes caring for six (6) or fewer children are not required to have a basic daycare license or certification. A family daycare home may, however, elect voluntarily to secure a basic daycare license and must meet the same requirements as for daycare centers. Family daycare homes wishing to apply for a basic daycare license must comply with the requirements of a fire inspection, health inspection and criminal history check, when required. Family daycare homes electing to secure a basic daycare license will be charged the same fees as for daycare centers. (4-9-09)~~

~~**09. Procedure for Criminal History Checks.** The Department is hereby authorized to obtain and submit criminal history checks with fingerprints on applicants, owners, operators, employees and volunteers of daycare centers, group daycare facilities and family daycare homes, when the home wishes to voluntarily comply with the requirements for a basic daycare license. The criminal history check is conducted under Sections 39-1113 and 56-1004A, Idaho Code, and IDAPA 16.05.06, "Criminal History and Background Checks." Criminal history checks are required on employees, volunteers, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. Basic daycare licenses, certifications and/or daycare provider permits will be used as a means of verifying that no record has been found under Sections 39-1113 and 39-1113(3);~~

~~Idaho Code, on licensing and certification applicants, owners, operators, employees and volunteers requiring criminal history checks. (4-9-09)~~

~~**10. Temporary Basic Daycare Licenses, Certifications, and Daycare Provider Permits. (3-30-01)**~~

~~**a.** The Department may issue temporary basic daycare license, temporary certifications and temporary daycare provider permits to licensing or certification applicants pending the completion of the necessary daycare inspections or criminal history checks. The Department may also issue temporary daycare provider permits to daycare providers who are owners, operators, employees and volunteers pending the completion of the criminal history check. All temporary basic daycare licenses, temporary certifications and temporary daycare provider permits will be issued under the following conditions: (4-9-09)~~

~~i. Issued for a period not to exceed one hundred twenty (120) days, unless otherwise extended by the Department. (4-9-09)~~

~~ii. Applicants, owners, operators, employees and volunteers requiring a criminal history check properly completing and signing a notarized self-declaration certifying that they have never been found guilty of or received a withheld judgement for any of the crimes enumerated in Sections 39-1113 and 39-1115(3), Idaho Code, pending the completion of the criminal history check. (3-30-01)~~

~~iii. All temporary basic daycare licenses and certifications are conditional upon satisfactory daycare facility inspections and applicants' satisfactory criminal history checks. (3-30-01)~~

~~iv. All temporary daycare provider permits are conditional upon satisfactory criminal history checks. (3-30-01)~~

~~**b.** If a criminal history check on an applicant for licensing or certification or a currently licensed or certified daycare facility discloses an owner, operator, employee or volunteer with a guilty conviction or a withheld judgement under Sections 39-1113 and 39-1115(3), Idaho Code, the individual must be suspended immediately from continued employment or volunteering. The daycare facility and individual will be in violation of these rules and subject to a misdemeanor if the individual is retained after receiving notice by certified mail from the Department that the individual has been found guilty of or received a withheld judgement for an offense under Sections 39-1113 and 39-1115(3), Idaho Code. (4-9-09)~~

~~**11. Responsibilities of Applicants, Owners or Operators.** It is the responsibility of the applicant, owner or operator of a daycare facility to maintain a personnel record on each employee and volunteer at the daycare facility having direct contact with children. The personnel record must include date of initial employment or assignment, date of termination or extended leave from employment or assignment, a copy of the daycare provider permit and any other information which may be necessary to establish daycare facility and personnel compliance with Section 39-1105, Idaho Code. It is the responsibility of the applicant, owner or operator of a daycare facility to ensure new employees and volunteers having direct contact with children, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children, submit to the Department within ten (10) days from the date of initial employment or assigned self-declaration certifying they have not been found guilty of or received a withheld judgement for the crimes under Section 39-1115(3), Idaho Code. Two (2) fingerprint cards (FD-258) with fingerprints for personnel requiring criminal history checks must also be completed within ten (10) days from the date of initial employment or assignment. (4-9-09)~~

~~**12. Immunizations Required.** Under Section 39-1118, Idaho Code, the immunizations required and the manner and frequency of their administration are provided in IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." (4-9-09)~~

~~**13. Employee Training.** The owner operator of a daycare center must ensure through documentation that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee's hire date. (4-9-09)~~

~~**14. Preemption.** These rules do not preempt more stringent local regulation or requirements. (3-30-01)~~

301. TYPES OF DAYCARE LICENSES.

Subject to meeting all requirements under Title 39, Chapter 11, Idaho Code, and the rules and minimum standards in this chapter, the Department will determine the type of daycare license required by an owner or operator providing daycare by counting each child in attendance, regardless of relationship to the person or persons providing the care. The following types of daycare licenses may be issued by the Department. (7-1-10)T

01. Daycare Center License. A daycare center license is issued for a place or facility providing daycare, where thirteen (13) or more children, regardless of relationship to the person or persons providing the care, are in attendance. (7-1-10)T

02. Group Daycare Facility. A group daycare facility license is issued for a place or facility providing daycare, where seven (7) to twelve (12) children, regardless of relationship to the person or persons providing the care, are in attendance. (7-1-10)T

03. Family Daycare Home. A family daycare home is not required to be licensed. However, a family daycare home may voluntarily elect to be licensed by the Department. (7-1-10)T

302. -- 308. (RESERVED).

309. CRIMINAL HISTORY AND BACKGROUND CHECK FOR DAYCARE STANDARDS.

01. Criminal History and Background Check for Daycare Centers and Group Daycare Facilities. Each owner, operator, or applicant seeking licensure for a daycare center, group daycare facility, or a family daycare home must submit evidence that is satisfactory to the Department that the following individuals have successfully completed and received a clearance for a Department criminal history and background check under the provisions of Sections 39-1105 and 39-1113, Idaho Code: (7-1-10)T

- a.** Owners, operators, and staff; (7-1-10)T
- b.** All other individuals thirteen (13) years of age or older who have unsupervised direct contact with children; or (7-1-10)T
- c.** All other individuals thirteen (13) years of age or older who are regularly on the premises. (7-1-10)T

02. Juvenile Justice Records. The criminal history and background check for any individual under eighteen (18) years of age, must include a check of the juvenile justice records, as authorized by the minor and his parent or guardian. Records must be checked for each jurisdiction in which the individual has resided since becoming thirteen (13) years of age through eighteen (18) years of age. Each owner, operator, or applicant is responsible for requesting a check of the juvenile justice record, paying for the costs of a check of the juvenile justice records, and submitting them to the Department for review. A check of the juvenile justice records must include the following: (7-1-10)T

- a.** Juvenile justice records of adjudication of the magistrate division of the district court; (7-1-10)T
- b.** County probation services; and (7-1-10)T
- c.** Department records. (7-1-10)T

03. Criminal History and Background Check for Family Daycare Homes. Under Section 39-1114, Idaho Code, any person providing daycare for four (4) or more children in a family daycare home is required to comply with the requirements of Sections 39-1105 and 39-1113, Idaho Code. (7-1-10)T

04. Criminal History and Background Check for Private Schools and Private Kindergartens. Under Section 39-1105, Idaho Code, any person who owns, operates, or is employed by a private school for educational purposes for children four (4) through six (6) years of age or a private kindergarten is required to comply with the requirements of Sections 39-1105 and 39-1113, Idaho Code. (7-1-10)T

05. Cost of Criminal History and Background Check and Juvenile Justice Records. Each individual who requests and obtains a Department criminal history and background check is responsible for the cost of the criminal history and background check and check of juvenile justice records. (7-1-10)T

06. On-going Duty to Report Convictions. Following completion of a criminal history and juvenile justice background check and clearance, additional criminal convictions and juvenile justice adjudications for disqualifying crimes under Section 39-1113, Idaho Code, must be self-disclosed by the individual to the owner or operator of a daycare center, group daycare facility, or family daycare home. The owner or operator must report these additional convictions and adjudications to the Department within five (5) days of learning of the conviction or adjudication. (7-1-10)T

310. -- 320. (RESERVED).

321. APPLICATION FOR DAYCARE LICENSE OR RENEWAL.

Any individual applying for licensure as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must be at least eighteen (18) years of age. The applicant must apply on forms provided by the Department and must provide information required by the Department set forth in the following Subsections 321.01 through 321.10. (7-1-10)T

01. Completed and Signed Application. A completed application form signed and dated by the applicant. (7-1-10)T

02. Licensing Fee. The applicant must pay the appropriate licensing fee prior to the issuance of a daycare license by the Department. (7-1-10)T

03. Inspection Reports. The following reports must be submitted to the Department with the application: (7-1-10)T

a. Proof that the proposed facility meets local building code, where required; (7-1-10)T

b. Proof that the proposed facility meets local electrical code, where required; (7-1-10)T

c. Proof that the proposed facility meets fire code, where required; and (7-1-10)T

d. Proof that the facility meets local planning and zoning requirements. (7-1-10)T

04. Proof of Insurance. The applicant must provide proof of current fire and liability insurance coverage for the daycare facility. (7-1-10)T

05. Criminal History and Background Clearance. Evidence that the applicant and all individuals required to have a criminal history and background check have received a clearance from the Department required in Section 309 of these rules. (7-1-10)T

06. Statement to Comply. The applicant must provide a written statement that these rules have been thoroughly read and reviewed and the applicant is prepared to comply with all of its provisions. (7-1-10)T

07. Statement Disclosing Revocation or Disciplinary Actions. A written statement that discloses any revocation or other disciplinary action taken or in the process of being taken against the applicant as a daycare provider in Idaho or any other jurisdiction, or a statement from the applicant stating he has never been involved in any such action. (7-1-10)T

08. Other Information as Requested. The applicant must provide other information that may be requested by the Department for the proper administration and enforcement of the provisions of this chapter. (7-1-10)T

09. Additional Requirements for License Renewal. A daycare license must be renewed every two

(2) years. The daycare operator must submit to the Department the renewal application, fee, and all required documentation in this section of rule at least forty-five (45) days prior to the expiration of the current daycare license. (7-1-10)T

10. Termination of Application Process. Failure of the applicant to cooperate with the Department in the application process may result in the termination of the application process. Failure to cooperate means that the information requested is not provided within ninety (90) days, or not provided in the form requested by the Department, or both. (7-1-10)T

321. -- 324. (RESERVED).

325. ISSUANCE OF LICENSE.

01. Department Action. The Department will order a health and safety inspection of the daycare facility once the application for licensure is complete and the licensing fee has been paid. (7-1-10)T

02. Issuance of a Regular License. If the Department determines the applicant is in compliance with the rules and minimum standards set forth in these rules, the Department will, within sixty (60) days from the date the completed application is submitted, issue one (1) of the following licenses: (7-1-10)T

a. Daycare Center License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; (7-1-10)T

b. Group Daycare Facility License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; or (7-1-10)T

c. Family Daycare Home License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect. (7-1-10)T

03. Issuance of Provisional License. A provisional daycare license may be issued for a period of time not to exceed one hundred eighty (180) days provided this does not effect the health, safety, and well-being of any child in daycare at the home or facility and the Department determines that a licensing standard cannot be met but is expected to be corrected within six (6) months. A provisional daycare license automatically expires after one hundred eighty (180) days and can only be issued one (1) time in any twelve-month period. (7-1-10)T

04. Denial of Licensure. If the Department determines the applicant is not in compliance with the rules and minimum standards set forth in this chapter and further determines not to issue a regular license or provisional license, the Department will, within thirty (30) days from the date the completed application is submitted, issue a letter of denial of licensure stating the basis for the denial. (7-1-10)T

05. Incomplete Application. The Department is not required to take any action on an application until the application is complete. (7-1-10)T

06. Notification of License Renewal. The Department will notify the licensed daycare operator at least ninety (90) days prior to expiration of the license. (7-1-10)T

07. List of Licensed Daycare Facilities. The Department will maintain a list of all licensed daycare facilities for public use. (7-1-10)T

326. -- 329. (RESERVED).

330. STAFF AND OTHER INDIVIDUAL RECORD REQUIREMENTS.

Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must maintain a current list covering the previous twelve-month period of all staff and other individuals thirteen (13) years of age or older who have unsupervised direct contact with children, or are regularly on the premises. The list must specify, at a minimum, the following: (7-1-10)T

-
- 01. Legal name.** (7-1-10)T
- 02. Proof of Age.** (7-1-10)T
- 03. Phone Number.** (7-1-10)T
- 04. Record of Training.** (7-1-10)T
- 05. Verification of Criminal History and Background Check Clearance.** (7-1-10)T
- 06. Results of Juvenile Justice Records.** The results of juvenile justice records, when applicable. (7-1-10)T
- 07. Certification.** Verification of Pediatric Rescue Breathing, Infant-Child CPR, and First Aid Treatment certification from a certified instructor, when applicable. (7-1-10)T
- 08. Record of Hours.** The times, dates, and records of hours on the premises each day. (7-1-10)T
- 331. CHILD RECORD CONTENT REQUIREMENTS.**
Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must maintain a record for each child in attendance covering the previous twelve-month period. The record must contain, at a minimum, the following: (7-1-10)T
- 01. Child's Full Name.** (7-1-10)T
- 02. Date of Birth.** (7-1-10)T
- 03. Parent or Guardian's Name, Address, and Contact Information.** (7-1-10)T
- 04. Emergency Contact Information.** (7-1-10)T
- 05. Child's Health Information.** (7-1-10)T
- a. Immunization record or waiver of exemption form or statement;** (7-1-10)T
- b. Any medical conditions that could affect the care of the child;** (7-1-10)T
- c. Medications the child is taking or may be allergic to.** (7-1-10)T
- 06. Record of Attendance.** The times, dates, and record of attendance each day. (7-1-10)T
- 332. -- 334. (RESERVED).**
- 335. CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZES.**
The Department determines the maximum allowable ratio of children to staff and maximum group size as described in the tables provided in Subsections 335.01 and 335.02 of this rule. (7-1-10)T
- 01. Daycare Centers Child-Staff Ratios and Maximum Group Size.**

DAYCARE CENTERS CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZE Based on Age of Youngest Child TABLE 335.01		
<u>Ages and Counts Based on Age of Youngest Child</u>	<u>Child:Staff Ratio</u>	<u>Maximum Group Size</u>
A child or children birth to two (2) years of age	6:1 or 12:2	12
All children at least two (2) years of age	8:1 or 16:2	16
All children at least three (3) years of age	10:1 or 20:2	20
All children at least four (4) years of age	12:1 or 24:2	24
All children at least five (5) years of age	18:1 or 36:2	36

(7-1-10)T

02. Group Daycare Facilities and Licensed Family Daycare Homes - Child-Staff Ratios and Maximum Group Size.

GROUP DAYCARE FACILITIES AND LICENSED FAMILY DAYCARE HOMES CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZE Based on Age of Youngest Child TABLE 335.02		
<u>Ages and Counts Based on Age of Youngest Child</u>	<u>Child:Staff Ratio</u>	<u>Maximum Group Size</u>
No child or children under the age of two (2)	12:1	12
One (1) or two (2) children under the age of two (2) years	10:1 or 12:2	10 or 12
Three (3) or more children under the age of two (2) years	9:1 or 12:2	9 or 12

(7-1-10)T

03. Compliance with Child-Staff Ratios and Maximum Group Sizes. Child-staff ratios and maximum group sizes must be maintained at all times during all hours of operation when children are in attendance and when transporting children. (7-1-10)T

a. Each child in attendance is counted by the Department as one (1) child for the purposes of determining compliance with child-staff ratios; (7-1-10)T

b. The ratio of children to staff and maximum group size in mixed age groups is determined by the age of the youngest child in attendance; (7-1-10)T

c. Each adult staff member who is providing direct care for a child or children is counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios; and (7-1-10)T

d. Each staff member sixteen (16) and seventeen (17) years of age under the supervision of an adult staff member, when providing direct care for a child or children, may be counted by the Department as one (1) staff

member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios.
(7-1-10)T

04. Supervision of Children. The owner or operator and all staff are responsible for the direct care, protection, supervision, and guidance of children through active involvement or direct observation. In addition to meeting all of the minimum requirements of child-staff ratio and maximum group size, the owner or operator of a daycare center, group daycare facility, or family daycare home licensed by the Department must ensure that at least one (1) adult staff member is:
(7-1-10)T

a. Awake and on duty on the premises at all times during regular business hours or when children are in attendance, and
(7-1-10)T

b. Currently certified in pediatric rescue breathing, infant-child CPR, and first-aid treatment.
(7-1-10)T

05. Napping Children. Napping children who are not within sight of a staff member must be within easy hearing distance at all times.
(7-1-10)T

06. Overnight Daycare. For daycare operators providing overnight care of children, the following must apply:
(7-1-10)T

a. A sleeping child must sleep on the same level as the staff member who must be able to hear the child; and
(7-1-10)T

b. A staff member must be awake and on duty to release and receive a child.
(7-1-10)T

336. -- 339. (RESERVED).

340. DAYCARE CENTER TRAINING REQUIREMENTS.

Each owner or operator of a daycare center licensed by the Department must receive and ensure that each staff member receives and completes four (4) hours of ongoing training every twelve (12) months after the staff member's date of hire.
(7-1-10)T

01. Child Development Training. Training must be related to continuing education in child development.
(7-1-10)T

02. Documented Training. It is the responsibility of the owner or operator of the daycare center to ensure that each staff member has completed four (4) hours of training each year. The training must be documented in the staff member's record.
(7-1-10)T

03. Pediatric Rescue Breathing, Infant-Child CPR and First Aid Treatment Training. Pediatric rescue breathing, infant-child CPR, and first aid treatment training will not count towards the required four (4) hours of annual training.
(7-1-10)T

04. Staff Training Records. Each owner or operator of the daycare center is responsible for maintaining documentation of staff's training and may be asked to produce documentation at the time of license renewal.
(7-1-10)T

342. -- 344. (RESERVED).

345. MANDATORY REPORTING OF ABUSE, ABANDONMENT, OR NEGLECT.

Under Section 16-1605, Idaho Code, daycare personnel, including the owners, operators, staff, and any other person who has reason to believe that a child has been abused, abandoned, or neglected or is being subjected to conditions or circumstances which would reasonably result in abuse, abandonment, or neglect, must report or cause to be reported within twenty-four (24) hours, such conditions or circumstances to the Department or the proper law enforcement agency.
(7-1-10)T

346. VISITATION AND ACCESS.

01. Visitation Rights. Parents and guardians have the absolute right to enter the daycare premises when their child is in the care of the daycare operator. Failure or refusal to allow parental or guardian entry to the daycare premises or access to their child may result in the suspension or revocation of a daycare license. (7-1-10)T

02. Denied or Limited Visitation Rights by Court Order. If a parent or guardian has been granted limited or has been denied visitation rights by a court of competent jurisdiction, and the daycare operator has written documentation from the court, Subsection 346.01 of this rule does not confer a right to visitation upon the parent or guardian. (7-1-10)T

03. Department Access. The owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must allow the Department access to the premises for re-inspection at any time during the licensing period. (7-1-10)T

347. -- 349. (RESERVED).

350. FIRE SAFETY STANDARDS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire safety standards outlined in Subsections 350.01 and 350.02 of this rule. (7-1-10)T

01. Inspections. Inspections must be completed by the local fire official or designee. For a daycare located outside of the area of authority outlined in Section 39-1109, Idaho Code, the Department can designate an approved inspector for daycare licensing purposes only. (7-1-10)T

02. Unobstructed Exits. Required exits must be located in such a way that an unobstructed path outside the building is provided to a public way or area of refuge. (7-1-10)T

a. Exit doors must open from the inside without the use of a key or any special knowledge or effort. (7-1-10)T

b. There must be at least two (2) exits located a distance apart of not less than one-half (1/2) the diagonal dimension of the building or portion used for daycare, but not to exceed seventy-five (75) feet. An exception may be made for the following: (7-1-10)T

i. The distance between exits may be extended to ninety (90) feet if the building is totally protected throughout with smoke detectors; or (7-1-10)T

ii. The distance between exits may be increased to one hundred ten (110) feet if the building is equipped with an automatic fire sprinkler system. (7-1-10)T

c. The required dimensions of exits must not be less than thirty-two (32) inches of clear exit width and not be less than six (6) feet, eight (8) inches in height. An exception for sliding patio doors will be accepted as a required second exit in a family daycare home and group daycare facilities only. (7-1-10)T

d. Sleeping room exits must be provided with at least one (1) emergency egress window having at least a minimum single net clear opening of five point seven (5.7) square feet, minimum height twenty-four (24) inches, minimum width twenty (20) inches, and maximum finished sill height not over forty-four (44) inches. (7-1-10)T

i. Approved egress windows from sleeping areas must be operable from the inside without the use of separate tools. (7-1-10)T

ii. In lieu of egress windows, an approved exit door is acceptable. (7-1-10)T

iii. An approved piece of furniture or platform, if anchored in place, may be approved to sit in front of a window if the sill height is over forty-four (44) inches. (7-1-10)T

e. Where children are located on a story below the level of exit discharge (basement), there must be at least two (2) exits, one (1) of which must open directly to the outside. More than one (1) exit from the basement opening directly to the outside may be required, depending on the structure of the building, in order to ensure the safety of the occupants. (7-1-10)T

f. Where children are located on a story above the level of exit discharge, there must be two (2) exits, one (1) of which must open directly to the outside and be in compliance with building codes. (7-1-10)T

351. FACILITY CAPACITY AND DETERMINING OCCUPANT LOAD.

Occupant load is determined by the local fire official or designee. (7-1-10)T

01. Area for Daycare Use Only. The local fire official or designee will only use those areas used for daycare purposes when determining the occupant load. (7-1-10)T

02. Facilities with an Occupancy Load of Fifty or More. Facilities with an occupancy load of fifty (50) or more occupants must meet the requirements in Section 350 of these rules in addition to Subsections 351.01 through 351.03 of this rule. (7-1-10)T

a. Exit doors must swing in the direction of egress. (7-1-10)T

b. Exit doors from rooms, if provided with a latch, must have panic hardware installed. (7-1-10)T

03. Exit Signs. Exit signs must be installed at required exit doorways and wherever else necessary to clearly indicate the direction of egress. (7-1-10)T

352. FIRE EXTINGUISHERS AND SAFETY REQUIREMENTS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire extinguisher and safety requirements in this section of rule as applicable for size and type of facility. (7-1-10)T

01. Portable Fire Extinguisher. There must be an approved portable fire extinguisher (minimum 2A-10BC) mounted securely in a visible location not to exceed five (5) feet from the floor to the top of the extinguisher and not more than seventy five (75) feet travel distance to an extinguisher and maintained properly. (7-1-10)T

02. Kitchen Area. An approved fire extinguisher must be present or a hood-type fire suppression system must be installed in the kitchen area. (7-1-10)T

03. Fire Extinguishers. Approved fire extinguishers must be maintained properly. (7-1-10)T

04. Facilities Over Three Thousand Square Feet. Each daycare facility over three thousand (3,000) square feet is required to have additional fire extinguishers as approved by the local fire official or designee. (7-1-10)T

05. Fire Alarm System. Each daycare facility with over fifty (50) children, must have an approved fire alarm system installed. (7-1-10)T

06. Smoke Detectors. Smoke detectors must be installed and maintained in the following locations: (7-1-10)T

a. On the ceiling or wall outside or each separate sleeping area in the immediate vicinity of bedrooms; (7-1-10)T

b. In each room used for sleeping purposes; and (7-1-10)T

c. In each story within a facility including basements. (7-1-10)T

d. If there is a basement, there must be a smoke detector installed in the basement having a stairway which opens from the basement into the facility. Such detector must be connected to a sounding device or other detector to provide an alarm which is audible in the sleeping area. (7-1-10)T

07. **Automatic Sprinkler Systems.** An automatic sprinkler system must be provided in all daycare facilities greater than twenty thousand (20,000) square feet in area or when the number of children under the age of eighteen (18) months exceeds one hundred (100). (7-1-10)T

353. FIRE SAFETY AND EVACUATION PLANS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must have an approved fire safety and evacuation plan prepared. Fire evacuation and safety plans must include the following: (7-1-10)T

01. **Evacuation.** Procedures and policies for accounting for staff and children after an evacuation is completed. (7-1-10)T

02. **Assembly Point.** Evacuation plan and assembly point for children and staff. (7-1-10)T

03. **Locations of Facility Exits.** (7-1-10)T

04. **Evacuation Routes.** (7-1-10)T

05. **Location of Fire Alarms.** (7-1-10)T

06. **Location of Fire Extinguishers.** (7-1-10)T

07. **Annual Review.** Fire safety and evacuation plans must be reviewed or updated annually and available in the facility for reference and review. (7-1-10)T

08. **Frequency of Fire and Emergency Evacuation Drills.** Fire and evacuation drills must be conducted on a routine schedule and all staff and children must participate. (7-1-10)T

354. -- 359. (RESERVED).

360. HEALTH STANDARDS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the health standards in Subsections 360.01 through 360.19 of this rule. Health inspections will be completed by a qualified inspector designated by the Department. (7-1-10)T

01. **Food Source.** Food must be from an approved source as defined in IDAPA 16.02.19, "The Idaho Food Code." Food must not be served past expiration or "use by date." (7-1-10)T

02. **Food Preparation.** Food for use in daycare facilities must be prepared and served in a sanitary manner with sanitized utensils and on surfaces that have been cleaned, rinsed, and sanitized prior to use to prevent cross-contamination. (7-1-10)T

a. Frozen food must be thawed in the refrigerator, under cold running water, or as part of the cooking process. Food must be cooked to proper temperatures according to IDAPA 16.02.19, "The Idaho Food Code." (7-1-10)T

b. Individuals preparing food must use proper hand-washing techniques, minimize bare hand contact with food, and wear clean clothes. (7-1-10)T

03. **Food Temperatures.** Potentially hazardous foods must be kept refrigerated at forty-one degrees Fahrenheit (41°F) or below, held hot at one hundred thirty-five degrees Fahrenheit (135°F) or more, and reheated or cooled at safe temperatures according to IDAPA 16.02.19, "The Idaho Food Code." Refrigerators must be equipped with an accurate thermometer. (7-1-10)T

04. Food Storage. All food that is served in daycare facilities must be stored in such a manner that protects it from potential contamination. There must be no evidence of pests present in the daycare facility. (7-1-10)T

05. Food Contact Surfaces. Food contact surfaces must be kept clean and sanitized, including counters, serving tables, high chair trays, and cutting boards. (7-1-10)T

06. Dishwashing Sanitizing. Dishes, glasses, utensils, silverware and all other objects used for food preparation and eating must be sanitized using appropriate sanitizing procedures. (7-1-10)T

07. Utensil Storage. Clean utensils must be stored on clean shelves or drawers and not subject to recontamination. Sharp knives and other sharp objects must be kept out of reach of children. (7-1-10)T

08. Garbage. Garbage must be kept covered or inaccessible to children. (7-1-10)T

09. Hand Washing. Children and facility staff must be provided with individual or disposable towels for hand drying. The hand washing area must be equipped with soap and warm and cold running water. (7-1-10)T

10. Diaper Changing. Diaper changing must be conducted in such a manner as to prevent the spread of communicable diseases. A diaper-changing area must be separate from food preparation and serving areas and have easy access to a hand-washing sink. (7-1-10)T

11. Sleeping Areas. Children sleeping at the facility must have separate cots, mats, or beds and blankets. (7-1-10)T

12. Restrooms, Water Supply, and Sewage. All daycare facilities must have restrooms. (7-1-10)T

a. Each facility must have at least one (1) flushable toilet and at least one (1) hand washing sink with warm and cold water per restroom. (7-1-10)T

b. Plumbing and bathroom fixtures must be in good condition. (7-1-10)T

c. In addition, daycare centers must comply with requirements of the International Building Code incorporated by reference in Section 004 of these rules. (7-1-10)T

13. Water Supply. The facility's water supply must meet one (1) of the following requirements: (7-1-10)T

a. Be from a public water system which is maintained according to IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," at the time of initial application and application for license renewal; or (7-1-10)T

b. Be from a private source, such as well or spring, and must be tested annually for bacteria and nitrate, and approved by the Department. (7-1-10)T

c. Water used for consumption at a daycare facility must be from an acceptable source. Temporary use of bottled water or boiled water may be allowed for a period specified by the by the Department. (7-1-10)T

14. Sewage Disposal. Facility sewage must be disposed of through a public system, or in the absence of a public system, in a manner approved by the local health authority, according to IDAPA 58.01.03 "Individual/Subsurface Sewage Disposal Rules." (7-1-10)T

15. Use of Alcohol and Illegal Drugs. Alcohol and illegal drugs must not be used by operators, children, staff, volunteers, or visitors at daycare facilities or in the presence of children during hours of operation or in vehicles while transporting children. (7-1-10)T

a. Any individual under the influence of alcohol or drugs must not be permitted at or in the daycare facility. (7-1-10)T

b. Illegal drugs are prohibited by law and therefore must not be allowed on the premises of a licensed daycare facility at anytime whether the facility is open or closed. (7-1-10)T

16. **Smoke Free Environment.** Children must be afforded a smoke-free environment during all daycare hours, whether indoors or outdoors. While children are in care, the operator and all staff must ensure that no smoking or other tobacco use occurs within the facility, in outdoor areas, or in vehicles when children are present. (7-1-10)T

17. **Medication.** No person can administer any medication to a child without it first being authorized by a parent or caretaker. All medications, refrigerated or unrefrigerated, must be in a locked box or otherwise inaccessible to children. (7-1-10)T

18. **Adequate Heat, Light and Ventilation.** A daycare facility must have adequate heat, light and ventilation. Window and doors must be screened if used for ventilation. (7-1-10)T

19. **Immunizations.** Daycare operators must comply with the immunizations requirements provided in IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho." (7-1-10)T

361. MISCELLANEOUS SAFETY REQUIREMENTS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with the miscellaneous safety standards in Subsections 361.01 through 361.07 of this rule. (7-1-10)T

01. **Telephone.** An operable telephone or cell phone must be available on the facility at all times and the following conditions must apply: (7-1-10)T

a. The telephone number used to meet this standard must be made available to parents and guardians. (7-1-10)T

b. Emergency phone numbers to include 911, an adult emergency substitute operator, as well as the address and phone number of the facility, must be posted by the telephone or in a location that is immediately visible at all times. (7-1-10)T

03. **Heat Producing Equipment.** A furnace, fireplace, wood-burning stove, water heater and other flame or heat-producing equipment shall be installed and maintained as recommended by the manufacturer. Fireplaces and wood burning stoves shall be protected on all surfaces by screens or other means. (7-1-10)T

04. **Portable Heating Devices.** Portable heating devices must be limited and approved for use and location by the Fire Inspector prior to use within a facility. (7-1-10)T

05. **Storage of Weapons, Firearms, and Ammunition.** Firearms or other weapons which are stored at a daycare facility must be kept in a locked cabinet or other container that is inaccessible to children, including a locked gun safe, while children are in attendance. (7-1-10)T

a. Ammunition must be stored in a locked container separate from firearms. (7-1-10)T

b. Matches, lighters, and any other means of starting fires must be kept away from and out of the reach of children. (7-1-10)T

c. Other weapons that could cause harm to children must be stored out of reach of children. (7-1-10)T

06. **Animals and Pets.** Any pet or animal present at the facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The operator must maintain the animal's vaccinations and vaccination records. These records must be made available to the Department upon request. (7-1-10)T

07. Storage of Hazardous Materials. Cleaning materials, flammable liquids, detergents, aerosol cans, pesticides, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas or constitute a hazard to the children. (7-1-10)T

362. -- 364. (RESERVED).

365. BUILDINGS, GROUNDS, FURNISHINGS, AND EQUIPMENT.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with these minimum standards in Subsections 365.01 through 365.08 of this rule. (7-1-10)T

01. Appliances and Electrical Cords. All appliances, lamp cords, exposed light sockets and electrical outlets must be protected to prevent electrocution. (7-1-10)T

02. Balconies and Stairways. Balconies and stairways accessible to children must have substantial railings as required by the state-adopted International Building Code that is incorporated by reference in Section 004 of these rules. (7-1-10)T

03. Stairway Protection. Where an operator cares for children less than three (3) years of age, stairways must be protected to prevent child access to stairs. (7-1-10)T

04. Hazard Areas Restrictions. Based on the age and functioning level of children in care and the type of hazard, any outdoor hazard area must be restricted to prevent easy access to the hazard. (7-1-10)T

05. Fueled Equipment. Fueled equipment including, but not limited to, motorcycles, mopeds, lawn-care equipment and portable cooking equipment may not be stored or repaired in areas where children are present. (7-1-10)T

06. Water Hazards. Above and below ground pools, hot tubs, ponds, and other bodies of water that are on the daycare facility premises must provide the following safeguards: (7-1-10)T

a. The area surrounding the body of water must be fenced and locked in a manner that prevents access by children and meets the following requirements: (7-1-10)T

i. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide and be designed so that a young child cannot climb or squeeze under or through the fence. The fence must surround all sides of the pool and have a self-closing gate that has a self latching mechanism in proper working order that is out of the reach of young children. (7-1-10)T

ii. If the house forms one (1) side of the barrier for the pool, all doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the door is opened. (7-1-10)T

b. Furniture or other large objects must not be left near the fence in a manner that would enable a child to climb on the furniture or other large object and gain access to the pool. If the area surrounding a pool, hot tub, pond or other body of water is not fenced and locked, there must be a secured protective covering that will prevent access by a child. (7-1-10)T

c. Wading pools and buckets must be empty when not in use. (7-1-10)T

d. Children must be under direct supervision of an adult staff member who is certified in pediatric rescue breathing, infant-child CPR, and first aid treatment while using a bath tub, pool, hot tub, pond, or other body of water. (7-1-10)T

e. A minimum of a four (4) foot high fence must be present that prevents access from the daycare facility premises, if the daycare premises are adjacent to a body of water. (7-1-10)T

07. Indoor Play Areas and Toys. The indoor play areas must be clean, reasonably neat and free from

accumulation of dirt, rubbish or other health hazards. (7-1-10)T

08. Outdoor Play Areas and Toys. Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. (7-1-10)T

a. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four (4) feet high without any holes or spaces greater than four (4) inches in diameter. (7-1-10)T

b. Outdoor equipment, such as climbing apparatus, slides and swings, must be anchored firmly and placed in a safe location and in accordance with the manufacturer's instructions. (7-1-10)T

c. Outdoor play areas must be designed so that all parts are always visible and are easily supervised by a staff member. (7-1-10)T

d. Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges and sharp corners. Unguarded ladders on slides must be kept in good repair and well maintained. (7-1-10)T

e. Toys and objects with a diameter of less than one (1) inch (two point five (2.5) centimeters), objects with removable parts that have a diameter of less than one (1) inch (two point five (2.5) centimeters), plastic bags, styrofoam objects and balloons must not be accessible to children ages three (3) and under or children who are known to place such objects in their mouths. (7-1-10)T

366. -- 389. (RESERVED).

390. CONTINUED COMPLIANCE, REPORTING CHANGES, AND CRITICAL INCIDENTS.
Each daycare owner or operator must remain in compliance at all times with fire, safety, and health requirements as required in this chapter of rules. (7-1-10)T

01. Posting of License and Other Information. (7-1-10)T

a. A daycare license issued by the Department to operators meeting the standards in these rules must be posted in plain view where it can be seen by parents and the public upon entering the facility. (7-1-10)T

b. A daycare must post contact information of the Department and the statewide number to file daycare complaints. (7-1-10)T

02. Reporting Changes. The Department must be notified of any changes that would affect the terms of licensure or could affect the health, well-being, or safety of children. (7-1-10)T

03. Critical Incidents. A daycare operator must report any of the following to the Department within twenty-four (24) hours: (7-1-10)T

a. Serious injury or death of a child at the facility; (7-1-10)T

b. Any arrests, citations, withheld judgments, or criminal convictions of disqualifying crimes associated with Section 39-1113, Idaho Code, of an operator or any other individual regularly on the premises of the facility and provide documentation that the individual is not working with children or is not on the premises. (7-1-10)T

391. -- 394. (RESERVED).

395. FAILURE TO COMPLY.

01. Misdemeanors to Operate Without a License. It is a misdemeanor to operate a daycare center or group daycare facility within this state without first obtaining a daycare license from the Department or to operate a

daycare center or group daycare facility without posting the license in a place easily seen by a parent or the general public. (7-1-10)T

a. The Department may grant a grace period of no more than sixty (60) days to allow the daycare facility to come into compliance with the minimum standards in this chapter and with Title 39, Chapter 11, Idaho Code. (7-1-10)T

b. The operator or owner must agree to begin the application process as described in Section 321 of these rules within one (1) business day of identification by the Department that a daycare owner or operator is not in compliance with Title 39, Chapter 11, Idaho Code or this chapter of rules. (7-1-10)T

02. Misdemeanor to Operate a Family Daycare Home for Four or More Children Without Obtaining a Criminal History Check. It is a misdemeanor to operate a family daycare home caring for four (4) or more children without obtaining the required criminal history check in Section 39-1105, Idaho Code. In the event of an initial citation for violation of the provisions of Section 39-1115, if a person makes the applications required within twenty (20) days, the complaint will be dismissed. Operating a family daycare home for four (4) or more children after failure to pass the required criminal history check is a misdemeanor. (7-1-10)T

03. Misdemeanor to Provide Daycare if Guilty of Certain Offenses. It is a misdemeanor to provide daycare services if found guilty of any offenses listed in Section 39-1113, Idaho Code. (7-1-10)T

~~30196.~~ -- 399. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING
DOCKET NO. 16-0602-1002 (FEE RULE)
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED

EFFECTIVE DATE: The effective date of this temporary rule is July 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Title 39, Chapter 11, Idaho Code, established a statewide system for the protection of children in daycare facilities which included licensing fees. The rule amendments in this docket provide requirements for licensing and inspections fees for daycare licensing that were effective on January 1, 2010.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of children in daycare and to comply with amendments to statutes that were effective on January 1, 2010.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Section 39-1107, Idaho Code, established a maximum licensing fee for a basic daycare license not to exceed \$175 for daycare centers, and \$100 for group daycare facilities and a family daycare home voluntarily licensed. Criminal history and background checks are the responsibility of the applicant and are based on the actual cost of the check.

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

The Department estimates that the cost for the State Fiscal Year 2011 will be approximately \$69,000, which is the difference for licensing fees collected and expenditures for health and safety inspections. This cost will be covered by the Federal Child Care Development Funds which is 100 percent federally funded.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted during 2010, because extensive rulemaking negotiations were held in 2009 under Docket No. 16-0602-0901, to meet new statutory requirements effective January 1, 2010.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Landis Rossi (208) 334-5688.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 27th day of May, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0602-1002

301. -- 319. (RESERVED).

320. DAYCARE LICENSING FEES.

The nonrefundable licensing fee must be paid to the Department prior to the issuance of a daycare license or renewal. (7-1-10)T

01. Daycare Licensing Fee Amounts. The maximum fee for initial application of an unlicensed daycare or renewal must not exceed the following amounts. (7-1-10)T

a. Daycare center license fee must not exceed one hundred seventy-five dollars (\$175). (7-1-10)T

b. Group daycare facility license fee must not exceed one hundred dollars (\$100). (7-1-10)T

c. Family daycare home voluntary license fee must not exceed one hundred dollars (\$100). (7-1-10)T

02. Daycare Fire Inspection Fee. Daycare fire inspection fees are payable to the local fire department or fire district official. The fire inspection fee can not exceed twenty-five dollars (\$25). The fire inspection fee will be deducted from the licensing fee payable to the Department with proof of the inspection and amount paid. (7-1-10)T

321. -- 399. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.05 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- INDUSTRIAL COMMISSION

DOCKET NO. 17-0205-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To coincide with statute changes enacted by the 2010 legislature in Section 72-528, Idaho Code, to reduce the redundancy of reporting information to the Industrial Commission of costs and fees associated with attorneys hired by injured workers. The attorney's costs and fees are already required on all proposed lump sum settlements and on the accompanying Attorney Fee Memorandum. Forms 1022 and 1023 sent out by the Commission require identical information.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

To conform to the language changes to Section 72-528, Idaho Code, approved by the 2010 legislature that become effective July 1, 2010.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact with these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are not controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Scott McDougall, 208-334-6063.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 17th day of May 2010.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
P.O. Box 83720

Boise, ID 83720-0041
Phone: 208-334-6059
Fax: 208-334-5145

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 17-0205-1001

281. RULE GOVERNING REPORTING OF ATTORNEY FEES.

01. Requirements for Reporting by Employer/Surety Attorney. When requested by the Commission, the following information shall be reported to the Commission, on a form furnished by the Commission (see IC Form 1023 below) by all sureties, self-insurers, the State Insurance Fund, the Industrial Special Indemnity Fund, and non-insured employers, relative to each case litigated before the Industrial Commission within thirty (30) days of the request of the Commission, following the entry of a final award by the Industrial Commission, or, in the event of an appeal to a higher court, not later than thirty (30) days following a final ruling by the court. The information reported shall break down the litigation expenses incurred in each case by the reporting party into the following categories, and, if the case is appealed, shall include such costs incurred on appeal: ~~(7-15-88)~~(7-1-10)T

- a. All fees paid to attorneys; (7-15-88)
- b. All expenses charged by attorneys; (7-15-88)
- c. Charges for reports or testimony of witnesses; (7-15-88)
- d. Cost of any depositions taken; (7-15-88)
- e. Cost for investigation made before or during hearing; (7-15-88)
- f. Costs of research or legal briefs (if separate from attorney fees). (7-15-88)

IC Form 1023:

INDUSTRIAL COMMISSION, P.O. BOX 83720, BOISE, ID 83720-0041

I.C. CASE NO. _____

I.C. CASE NAME _____

**REPORT OF LITIGATION EXPENSES
(EMPLOYER/SURETY/ISIF/SELF INSURERS)**

In accordance with the requirements of Section 72-528, Idaho Code, this form shall be filled out and returned to the Industrial Commission within thirty (30) days of the request by the Commission, following the time of entry of a final award by the Industrial Commission in the above case, or, in the event of an appeal to a final court, within 30 days following a final ruling by the court. If there is an appeal, the totals specified below shall include the expenses, costs, or fees incurred in the appeal.

- 1. Attorneys fees paid in case:
- 2. Expenses charged by attorneys:
- 3. Charges for reports or testimony of witnesses:
- 4. Cost of any depositions taken:
- 5. Cost of investigations made before or during hearing:

- 6. Costs of research or legal briefs (if separate from attorneys fees):
- 7. Filing fees paid on account of the litigation

TOTAL

Dated this _____ day of _____, 20 _____.
FIRM NAME _____
BY _____

Check Applicable Box:
 Self Insured Uninsured Employer Surety
 State Insurance Fund Industrial Special Indemnity Fund

Receipt of this form from the Commission shall be deemed a request for the information.

Sample copies of IC Form 1023 are available from the Industrial Commission, Judicial Division or Compensation Consultants, ~~317 Main Street~~, P. O. Box 83720 Boise, Idaho 83720-0041, telephone (208) 334-6000.

02. Information to Be Reported by Claimant Attorney. When requested, ~~the~~ the following information shall be reported to the Commission, on a form furnished by the Commission (see IC Form 1022 below) by all attorneys engaged in representing any claimant in a litigated workers' compensation insurance claim before the Commission, relative to each case litigated, within thirty (30) days of request of the Commission following the entry of a final award by the Industrial Commission, or in the event of an appeal to a higher court, not later than thirty (30) days following a final decision by the court. The information reported shall break down into the following categories the litigation expenses incurred in each case, and, if the case is appealed, shall include such expenses or costs incurred on appeal: ~~(7-15-88)~~(7-1-10)T

- a. Attorneys fees incurred in litigation and charged to claimant; (7-15-88)
- b. Expenses incurred in litigation and charged to claimant. (7-15-88)

IC Form 1022:

INDUSTRIAL COMMISSION, P. O. BOX 83720, BOISE, ID 83720-0041

I.C. CASE NO. _____

I.C. CASE NAME _____

REPORT OF LITIGATION EXPENSES (CLAIMANT'S ATTORNEY)

In accordance with the requirements of Section 72-528, Idaho Code, this form shall be filled out and returned to the Industrial Commission within thirty (30) days of request of the Commission following the time of entry of a final award by the Industrial Commission in the above case, or, in the event of an appeal to a final court, within thirty (30) days following a final ruling by the court. If there is an appeal, the totals specified below shall include the expenses, costs, or fees incurred in the appeal.

- 1. Attorneys fees incurred in litigation and charged to claimant:
- 2. Expenses incurred in litigation and charged to claimant:

TOTAL

Dated this _____ day of _____, 20 _____.
FIRM NAME _____
BY _____

Receipt of this form from the Commission shall be deemed a request for the information.

Sample copies of IC Form 1022 are available from Industrial Commission, ~~317 Main Street,~~ P.O. Box 83720 Boise, Idaho 83720-0041, telephone (208) 334-6000.

03. Definition of Litigated Case. For purposes of Section 72-528, Idaho Code, and this rule, a “case litigated before the Industrial Commission” shall mean a case in which a Complaint (formerly an application for hearing) has been filed. (7-15-88)

IDAPA 17 - INDUSTRIAL COMMISSION

17.05.01 - RULES UNDER THE CRIME VICTIMS COMPENSATION ACT

DOCKET NO. 17-0501-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 72-1004 and 72-1026, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking implements new statutory authority for adopting a medical fee schedule for benefit payments under the Crime Victims Compensation Act.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rulemaking confers a benefit by enabling the Crime Victims Compensation Account funds to be used to benefit more injured victims of violent crime who are without the ability to pay for medical treatment.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted due to the large number of potential parties affected and the short period of time between passage of the statute and the need to have an effective cost-saving fee schedule in place.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact George Gutierrez at 208-334-6070.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 17th day of May, 2010.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
P.O. Box 83720

Boise, ID 83720-0041
Phone: (208) 334-6059
Fax: (208) 334-2321

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 17-0501-1001

000. LEGAL AUTHORITY.

In accordance with Section 72-1004(1)(a), Idaho Code, the Industrial Commission shall promulgate rules implementing the provisions of ~~Sections 72-1001 through 72-1025~~ Chapter 10, Title 72, Idaho Code.

~~(7-1-93)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Commission. Where appropriate, references to the Commission in these rules includes the Commission and its employees. (11-17-86)

~~02. Gender.~~ *Reference within these rules to the masculine shall also include the feminine.* ~~(11-17-86)~~

~~032. Wages and Employer.~~ The terms “wages” and “employer” shall mean the ~~wages and~~ employer at the time of the criminally injurious conduct on which the Application for Compensation is based.

~~(11-17-86)~~(7-1-10)T

043. Wages. ~~In addition to cash remuneration,~~ The term “wages” shall mean the wages at the time of the criminally injurious conduct on which the Application for Compensation is based and shall include non-cash remuneration such as lodging and meals provided by the employer and gratuities such as tips, which are not paid by the employer, but which are received by the victim in the normal course of his employment. ~~(11-17-86)~~(7-1-10)T

~~05. Vacation.~~ *Vacation pay shall not be considered a collateral source.* ~~(11-17-86)~~

064. Compensation. For the purposes of Section 72-1023(1), Idaho Code, the term “compensation paid under this chapter” shall include attorney’s fees awarded pursuant to Section 72-1006, Idaho Code. (11-17-86)

~~07. Welfare Benefits.~~ *Pursuant to Section 72-1003(8), Idaho Code, funds payable to or on behalf of an indigent person under Chapter 35, Title 31, Idaho Code, shall be considered welfare only in those cases involving criminally injurious conduct that occurred on or after July 1, 1996.* ~~(7-1-97)~~

05. Medical Services. Words and terms used for determining the allowable payment for medical services under these rules are defined in Subsections 010.05.a. through 101.05.h. (7-1-10)T

a. “Allowable payment” means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider. (7-1-10)T

b. “Ambulatory Surgery Center (ASC)” means a facility providing surgical services on an outpatient basis only. (7-1-10)T

c. “Hospital” is any acute care facility providing medical or hospital services and which bills using a Medicare universal hospital billing form. (7-1-10)T

i. Large Hospital is any hospital with more than one hundred (100) acute care beds. (7-1-10)T

ii. Small Hospital is any hospital with one hundred (100) acute care beds or less. (7-1-10)T

d. “Provider” means any person, firm, corporation, partnership, association, agency, institution or

other legal entity providing any kind of medical service related to the treatment of a claimant for benefits under the Idaho Crime Victims Compensation Act. (7-1-10)T

e. “Medical Service” means medical, surgical, dental, mental health or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply. (7-1-10)T

f. “Reasonable” means a charge does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined below. (7-1-10)T

g. “Usual” means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (7-1-10)T

h. “Customary” means a charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (7-1-10)T

011. APPLICATIONS FOR COMPENSATION.

01. Claim for Benefits. To claim benefits under the Crime Victims Compensation Act, the claimant shall file an Application for Compensation with the Commission. Applications for Compensation ~~by victims shall be made using the form approved by the Commission which is attached hereto as Appendix A. Applications for Compensation by dependents of deceased victims shall be made using the form approved by the Commission which is attached hereto as Appendix B.~~ An Application for Compensation shall be deemed filed when it is received at the Commission’s office in Boise. (~~11-17-86~~)(7-1-10)T

02. Providing Information. Before paying benefits to any claimant, the Commission shall gather sufficient information to establish that the claimant is eligible for benefits. The Commission may require the claimant to assist the Commission in obtaining that information. (11-17-86)

03. Employment Verification. To verify information concerning a victim’s employment, the Commission may require the victim’s employer or employers to complete an Employment Verification form or the Commission may obtain such information from an employer by telephone. (11-17-86)

04. Order. ~~The Commission shall appoint one (1) of its employees to be the Crime Victims Supervisor.~~ After sufficient information has been gathered pursuant to ~~IDAPA 17.04.02~~ Subsection 011.02 of this rule, the ~~Crime Victims Supervisor Commission~~ may enter an award granting or partially granting benefits or an order denying benefits. The ~~Crime Victims Supervisor Commission~~ may also enter orders necessary to further the purposes of the Act. ~~Such awards and orders shall be deemed to be awards and orders of the Commission.~~ (~~11-17-86~~)(7-1-10)T

05. Finality of Order. An award or order issued by the ~~Crime Victims Supervisor Commission~~ shall be final and conclusive as to all matters considered in the award or order; provided that within twenty (20) days from the date that such an award or order is issued, the claimant may file a request that the ~~Crime Victims Supervisor Commission~~ reconsider the order or award, or the ~~Crime Victims Supervisor Commission~~ may reconsider the matter on ~~his~~ its own motion, and the award or order of the ~~Crime Victims Supervisor Commission~~ shall be final upon issuance of the order on reconsideration; and provided further that, within forty five (45) days from the date that any award or order is issued by the ~~Crime Victims Supervisor Commission~~, a claimant may file a Request for Hearing before the Commissioners. The Hearing shall be held in accordance with the procedures set out in Section 012 of these rules. Requests for Hearing and requests that the ~~Crime Victims Supervisor Commission~~ reconsider an order or award shall be deemed filed when received at the Commission’s office in Boise. (~~11-17-86~~)(7-1-10)T

06. Recipients of Payments for Medical Services. If, pursuant to any order of the Commission or the Crime Victims Supervisor, it is determined that a claimant is entitled to payment of medical expenses as provided in Section 72-1019(2), Idaho Code, or funeral or burial expenses as provided in Section 72-1019(4), Idaho Code, payment shall be made directly to the medical provider or the provider of funeral or burial services unless the claimant has already paid the provider; if the claimant has already paid the provider, payment shall be made to the claimant. (~~11-17-86~~)(7-1-10)T

07. Allowable Payments for Medical Services. The Commission shall pay providers the allowable payment for medical services under these rules adopted in accordance with Section 72-1026, Idaho Code. (7-1-10)T

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the allowable payment under the Crime Victims Compensation Act for medical services provided by providers other than hospitals and ASCs. The standard for determining the allowable payment for hospitals and ASCs shall be: (7-1-10)T

- i. For large hospitals: Eighty-five percent (85%) of the reasonable inpatient charge. (7-1-10)T
- ii. For small hospitals: Ninety percent (90%) of the reasonable inpatient charge. (7-1-10)T
- iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the reasonable charge. (7-1-10)T
- iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). (7-1-10)T
- v. Paragraph 011.07.e. of this rule, shall not apply to hospitals or ASCs. The Commission shall determine the allowable payment for hospital and ASC services based on all relevant evidence. (7-1-10)T

b. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
DESCRIPTION	CODE RANGE(S)		CONVERSION FACTOR
Anesthesia	00000 - 09999		\$60.05
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	\$144.48
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	\$129.00
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	\$113.52

MEDICAL FEE SCHEDULE			
<u>DESCRIPTION</u>	<u>CODE RANGE(S)</u>		<u>CONVERSION FACTOR</u>
<u>Surgery - Group Four</u>	<u>20000 - 20615</u> <u>30000 - 39999</u> <u>40000 - 49999</u> <u>50000 - 59999</u> <u>60000 - 60999</u> <u>62260 - 62999</u> <u>64000 - 64549</u> <u>65000 - 69999</u>	<u>Musculoskeletal System</u> <u>Respiratory & Cardiovascular</u> <u>Digestive System</u> <u>Urinary System</u> <u>Endocrine System</u> <u>Spine & Spinal Cord</u> <u>Nerves & Nervous System</u> <u>Eye & Ear</u>	<u>\$87.72</u>
<u>Surgery - Group Five</u>	<u>10000 - 12999</u> <u>29000 - 29799</u>	<u>Integumentary System</u> <u>Casts & Strapping</u>	<u>\$69.14</u>
<u>Radiology</u>	<u>70000 - 79999</u>	<u>Radiology</u>	<u>\$87.72</u>
<u>Pathology & Laboratory</u>	<u>80000 - 89999</u>	<u>Pathology & Laboratory</u>	<u>To Be Determined</u>
<u>Medicine - Group One</u>	<u>90000 - 90799</u> <u>94000 - 94999</u> <u>97000 - 97799</u> <u>97800 - 98999</u>	<u>Immunization, Injections, & Infusions</u> <u>Pulmonary / Pulse Oximetry</u> <u>Physical Medicine & Rehabilitation</u> <u>Acupuncture, Osteopathy, & Chiropractic</u>	<u>\$46.44</u>
<u>Medicine - Group Two</u>	<u>90800 - 92999</u> <u>96040 - 96999</u> <u>99000 - 99607</u>	<u>Psychiatry & Medicine Assessments & Special Procedures</u> <u>E / M & Miscellaneous Services</u>	<u>\$66.56</u>
<u>Medicine - Group Three</u>	<u>93000 - 93999</u> <u>95000 - 96020</u>	<u>Cardiography, Catheterization, & Vascular Studies</u> <u>Allergy / Neuromuscular Procedures</u>	<u>\$72.24</u>

(7-1-10)T

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. (7-1-10)T

d. Adjustment of Conversion Factors. The conversion factors set out in this rule may be adjusted each fiscal year (FY), starting with FY 2012, as determined by the Commission. (7-1-10)T

e. Services Without a CPT Code, RVU or Conversion Factor. The allowable payment for medical

services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 011.07.b. of this rule, determine the allowable payment for that service, based on all relevant evidence.

(7-1-10)T

f. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows:

(7-1-10)T

i. Modifier 50: Additional fifty percent (50%) for bilateral procedure.

(7-1-10)T

ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure.

(7-1-10)T

iii. Modifier 80: Twenty-five percent (25%) of coded procedure.

(7-1-10)T

iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants.

(7-1-10)T

078. **Wage Loss Benefits.** For the purpose of determining compensation benefits under Sections 72-1019(1) and 72-1019(3), Idaho Code, “wages received at the time of the criminally injurious conduct” shall be the victim’s gross weekly wage, which shall be determined as follows:

~~(11-17-86)~~(7-1-10)T

a. If the wages were fixed by the year, the weekly wage shall be the yearly wage divided by fifty-two (52).

(11-17-86)

b. If the wages were fixed by the month, the weekly wage shall be the monthly wage multiplied by twelve (12) and divided by fifty-two (52).

(11-17-86)

c. If the wages were fixed by the week, the amount so fixed shall be the weekly wage. (11-17-86)

d. If the wages were fixed by the hour, and the victim worked or was scheduled to work the same number of hours each week, the weekly wage shall be the hourly rate times the number of hours that the victim worked or was scheduled to work each week, plus one-half (1/2) the hourly wage times the number of hours worked or scheduled each week in excess of forty (40) hours if the victim was paid time-and-a-half for work in excess of forty (40) hours per week.

(11-17-86)

e. If the wages were fixed by the hour and the victim did not work the same number of hours each week, or if the victim was paid on a piecework or commission basis, the weekly wage shall be computed by averaging the amounts that the victim was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with parts 1 through 3 of this rule; provided that, if the victim was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that he worked.

(11-17-86)

f. If none of the above methods are applicable, the weekly wage shall be computed in a manner consistent with the above methods.

(11-17-86)

089. **Treating Physician.** A victim may choose his own treating physician. If, after filing an Application for Compensation, a victim changes physicians without prior approval of the Commission, or if, without prior approval of the Commission, he seeks treatment or examination by a physician to whom he was referred by his treating physician, the Commission may deny payment for such treatment or examination.

(11-17-86)

0910. **Overpayment.** If the Commission erroneously makes payments to which a claimant is not entitled, the Commission may reduce future payments to that claimant by an amount equal to the overpayment or request a

refund when overpayments are made to either the claimant or the provider.

~~(11-17-86)(7-1-10)T~~

101. Limit on Compensation. Compensation payable under Sections 72-1019(7)(a) and 72-1019(7)(b), Idaho Code, may not exceed twenty thousand dollars (\$20,000). Compensation payable to a victim or his dependents under Sections 72-1019(7)(a) and 72-1019(7)(b), Idaho Code, when added to compensation payable, under Sections 72-1019(2) and 72-1019(4), Idaho Code, may not exceed twenty-five thousand dollars (\$25,000).

~~(11-17-86)(7-1-10)T~~

11. Weekly Compensation Benefits If Victim Employable But Not Employed. If a victim was employable, but not employed at the time of the criminally injurious conduct and as a result of that conduct has no reasonable prospect of being regularly employed in the normal labor market, he shall receive benefits pursuant to Section 72-1019(7)(a), Idaho Code, as follows, only until the victim has a reasonable prospect of being regularly employed in the normal labor market, or for a shorter period as determined by the Commission.

a. If, at the time of the injurious conduct the victim was receiving unemployment benefits, and as a result of that conduct the victim becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred and fifty dollars (\$150) or his weekly benefit amount under the Employment Security Law.

~~(11-17-86)(7-1-10)T~~

b. If, at the time of the criminally injurious conduct the victim was unemployed, but scheduled to begin employment on a date certain, and if he was unable to work for one (1) week as a result of that conduct, weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred and fifty dollars (\$150) or two-thirds (2/3) of the amount that he would have earned at his scheduled employment, and those benefits shall be payable beginning on the date that his employment was scheduled to begin.

~~(11-17-86)(7-1-10)T~~

c. If, prior to the criminally injurious conduct the victim was performing necessary household duties which he is disabled from performing as a result of that conduct, and it is necessary to employ a person who does not reside in the victim's house to perform those duties, the victim shall receive weekly benefits under the Crime Victims Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred and fifty dollars (\$150) per week.

~~(11-17-86)(7-1-10)T~~

d. In other circumstances, the Commission may award an amount it deems appropriate. (11-17-86)

123. Effective Date. Benefits shall be paid only to claimants whose Applications for Compensation are based upon criminally injurious conduct which occurred on or after July 1, 1986. (11-17-86)

012. HEARING PROCEDURES.

01. Request for Hearing. If a Request for Hearing is filed, an informal hearing shall be held. The Commission may conduct the hearing or it may assign the matter to a Commissioner or Referee. If the matter is assigned to a Commissioner or a Referee, the Commissioner or Referee shall submit recommended findings and decision to the Commission for its review. (11-17-86)

02. Recommendations. If the Commission does not approve the recommendations of a member or Referee, the commission may (1) review the record and enter its own findings and decision, (2) conduct another informal hearing and issue a decision based upon the record of both hearings, or (3) assign the matter to another member or Referee to conduct another informal hearing and make recommendations pursuant to Subsection 012.01 above based upon the record of both hearings. (11-17-86)

03. Notice of Hearing. The Commission shall give the claimant at least ten (10) days' advance written notice of the time and place of hearing and of the issues to be heard, either by personal service or certified mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at his last known address as shown in the records and files of the Commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the Commission. ~~(11-17-86)(7-1-10)T~~

04. Transcript of Hearing. All hearings shall be tape-recorded. In addition, the Commission may

arrange for a stenographic or machine transcription of any hearing. (11-17-86)

05. Record. At the hearing, the Application for Compensation filed by the claimant and any other documents in the Commission's file which contain information relevant to the issues in the case, shall be admitted into the record. Such documents shall be marked for identification and the record shall specify that those documents are admitted. The Commission, member, or Referee conducting the hearing shall give those documents the weight that is appropriate under the circumstances of the particular case. ~~(11-17-86)~~(7-1-10)T

06. Evidence. At the hearing, after the claimant has presented his evidence, the Commission, or the Commissioner or Referee conducting the hearing, shall allow an employee of the Commission to present evidence. After the presentation of evidence by an employee of the Commission, the Commission, or the Commissioner or Referee conducting the hearing may, in its or his discretion, allow any other person to testify. ~~(11-17-86)~~(7-1-10)T

07. Finality of Decision. After a hearing, the decision of the Commission shall be final and conclusive as to all matters adjudicated; provided that, within twenty (20) days from the date that such decision is issued, the claimant may file a Motion for Reconsideration or the Commission may reconsider the matter on its own motion, and the decision shall be final upon issuance of the order on reconsideration. ~~(11-17-86)~~(7-1-10)T

08. Commission Review. At the request of the claimant or on its own motion, the Commission may review and amend any final order or award, within three (3) years of the date of issue of such order or award; ~~(11-17-86)~~(7-1-10)T

- a. If there is a change in circumstances which affects the claimant's entitlement to benefits; (11-17-86)
- b. To correct a manifest injustice; (11-17-86)
- c. If the order or award is based upon facts which were misrepresented or which were not fully disclosed; or (11-17-86)
- d. To comply with the annual review requirements of Section 72-1021, Idaho Code. (11-17-86)

09. Subpoenas. Subpoenas shall be served in the manner provided by the Idaho Rules of Civil Procedure. Witness fees and mileage shall be in the amounts provided by the Idaho Rules of Civil Procedure and the Claimant shall pay the fees of any witness who is subpoenaed to testify in his behalf. (11-17-86)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.26.01 - RULES OF THE IDAHO STATE BOARD OF MIDWIFERY

DOCKET NO. 24-2601-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 30, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections [54-5505] 54-5404 and [54-5505] 54-5405, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2009 legislature passed House Bill 185 which created the State Board of Midwifery. The proposed rule is necessary to protect the public by allowing the board to establish and consider standards of conduct for licensure, renewal and reinstatement that includes: discipline against the applicant or individual's license in this or another state; or consideration of a felony conviction or any lesser crime that reflects adversely on the person's fitness to be a licensed midwife.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) (a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

In order to protect the public this change allows the board to establish and consider standards of conduct for licensure, renewal and reinstatement that includes: discipline against the applicant or individual's license in this or another state; or consideration of a felony conviction or any lesser crime that reflects adversely on the person's fitness to be a license midwife.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were noticed on an agenda and discussed in a public meeting.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 28th day of May, 2010.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220

Boise, ID 83702
(208) 334-3233 Ph.
(208) 334-3945, fax

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 24-2601-1001

450. DISCIPLINE UNPROFESSIONAL CONDUCT (RULE 450).

01. Grounds for Discipline Standards of Conduct. ~~The Board may discipline a licensed midwife for unprofessional conduct, including:~~ If a licensed midwife or an applicant for licensure, renewal, or reinstatement has engaged in unprofessional conduct, the Board may refuse to issue, renew, or reinstate the applicant's license and may discipline the licensee. Unprofessional conduct includes, without limitation, any of the following:

~~(3-29-10)~~(4-30-10)T

a. Disregarding a client's dignity or right to privacy as to her person, condition, possessions, or medical record; (3-29-10)

b. Breaching any legal requirement of confidentiality with respect to a client, unless ordered by a court of law; (3-29-10)

c. Submitting a birth certificate known by the licensed midwife to be false or fraudulent, or willfully making or filing false or incomplete reports or records in the practice of midwifery; (3-29-10)

d. Failing to provide information sufficient to allow a client to give fully informed consent; (3-29-10)

e. Engaging in the practice of midwifery while impaired because of the use of alcohol or drugs; (3-29-10)

f. Having a license suspended, revoked, or otherwise disciplined in this or any other state or jurisdiction; (4-30-10)T

g. Having been convicted of any felony, or of a lesser crime that reflects adversely on the person's fitness to be a licensed midwife. Such lesser crimes include, but are not limited to, any crime involving the delivery of health care services, dishonesty, misrepresentation, theft, or an attempt, conspiracy or solicitation of another to commit a felony or such lesser crimes. (4-30-10)T

h. Violating any standards of conduct set forth in these rules, whether or not specifically labeled as such, and including without limitation any scope and practice standards, record-keeping requirements, notice requirements, or requirements for documenting informed consent. (3-29-10)

02. ~~Discipline to Be Imposed.~~ ~~If the Board determines that grounds for discipline exist a licensed midwife has engaged in unprofessional conduct, it may impose discipline on a against the licensed midwife that includes, without limitation, the following:~~ It may impose discipline against the licensed midwife that includes, without limitation, the following: ~~(3-29-10)~~(4-30-10)T

a. Require that a licensed midwife practice midwifery under the supervision of another health care provider. The Board may specify the nature and extent of the supervision and may require the licensed midwife to enter into a consultation, collaboration, proctoring, or supervisory agreement, written or otherwise, with the other health care provider; (3-29-10)

b. Suspend or revoke a license; (3-29-10)

c. Impose a civil fine not to exceed one thousand dollars (\$1,000) for each violation of the Board's laws and rules; and (3-29-10)

d. Order payment of the costs and fees incurred by the Board for the investigation and prosecution of the violation of the Board's laws and rules. (3-29-10)

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.01.01 - RULES OF PROCEDURE OF THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-0101-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 61-401, 61-404, and 61-601, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the Commission's address below.

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

The Public Utilities Commission is proposing several amendments to its Rules of Procedure. The reasons for the proposed changes include: conform the Commission's testimony and transcript Rules 231 and 286 to changes in the Supreme Court's Appellate Rules; change Rule 43 (Representation of Parties) to conform to recent Supreme Court opinions regarding the representation of partnerships, corporations and other entities in Commission proceedings; add Rule 20 to make it easier to determine when telephone companies are no longer conducting business in Idaho; add a definition of "utility" to Rule 5; and make other changes to improve the clarity of rules (Rules 16, 125, 301) and correct citations, cross-references, or an Internet address (Rules 0, 4, 19, 121).

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: There is no fiscal impact on the state general fund in excess of ten thousand dollars (\$10,000) during the fiscal year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, formal negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the April 7, 2010 Idaho Administrative Bulletin, Vol. 10-4, page 25. A public rulemaking workshop was held on April 21, 2010.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before July 28, 2010.

Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 20th day of May, 2010.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:
472 W Washington
Boise, Idaho 83702-5918

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 31-0101-1001

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code; Chapters ~~9, 8~~ through 10, ~~and~~ 13, 15 through 17, Title 61, Idaho Code; Chapters 3 and 4, Title 62, Idaho Code; the Telecommunications Act of 1988, as amended, Chapter 6, Title 62; ~~and~~ Chapters 12, ~~Title 62, Idaho Code, Chapter and~~ 13, Title 62, Idaho Code; and the particular authority of Sections 56-904, 61-304 through 61-309, 61-501, ~~61-502, 61-503~~ through 61-505, 61-507, ~~61-516, 61-538, 61-541,~~ 61-601 through 61-607, 61-610 through 61-619, 61-620 through 61-626, ~~61-803 through 61-806,~~ 61-902 through 61-905, 61-909, 61-1003 through 61-1005, 61-1007, 61-1305, 61-1306, ~~61-1603 through 61-1607, 61-1703 through 61-1709,~~ 62-304, 62-305, 62-424, 62-604, ~~62-605, 62-608~~ through ~~62-612, 62-610A through 62-610F, 62-614 through~~ 62-616A, 62-619, 62-622, ~~62-622A,~~ 62-1201 through 62-1207, 62-1303, ~~and~~ 62-1304, ~~63-30291,~~ and ~~67-6528,~~ Idaho Code. ~~(4-5-00)~~()

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

Except as provided by statute and Rules ~~26, 52, 67,~~ ~~and~~ 233, and ~~287,~~ all materials filed with the Commission pursuant to these rules and all materials issued by the Commission pursuant to these rules are public documents subject to inspection, examination and copying. ~~(7-1-93)~~()

005. DEFINITIONS (RULE 5).

Terms of art used throughout these rules are defined within the rules themselves. The term "utility" used in these rules includes every common carrier, pipeline corporation, gas corporation, electric corporation, telephone corporation, and water corporation as defined in Chapter 1, Title 61, Idaho Code, and Section 62-603, Idaho Code. ~~(7-1-93)~~()

(BREAK IN CONTINUITY OF SECTIONS)

016. SERVICE BY COMMISSION - DESIGNATION OF AGENT (RULE 16).

The Commission Secretary serves all notices, orders, summonses, and complaints issued by the Commission or by the Secretary. (7-1-93)

01. Service of Orders and Notices. All notices and orders served by the Commission may be served by United States mail. Notices and orders may also be served by electronic mail in cases designated by the Commission. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is either deposited in the United States mail or transmitted electronically. All orders and notices shall be affixed with the Commission Secretary's official service date on the first page. The Commission Secretary will serve all orders and notices in a proceeding on the representatives of each party designated pursuant to Rule 41 for that proceeding and upon other persons designated by these rules or by the Commission or any Commissioner. (3-16-04)

02. Service of Summonses and Complaints. The Commission Secretary will serve complaints against utilities upon the person designated for that purpose by the utility. ~~All utilities must maintain on file with the Commission Secretary a designation of such a person.~~ Summonses and complaints directed to regulated utilities or other persons shall be served by registered or certified mail. Writs of summons or subpoena and warrants of attachments directed to all other persons must be served by a person authorized to serve process by statute or by the Idaho Rules of Civil Procedure. ~~(4-5-00)~~()

03. Designation of Agent for Service. All utilities shall designate a person as their agent to be served with summons and complaints. Utilities shall be responsible for maintaining on file with the Commission Secretary

the current name, mailing address and e-mail address of the person designated as the agent to receive service. ()

(BREAK IN CONTINUITY OF SECTIONS)

019. INCORPORATED BY REFERENCE -- IDAHO BAR COMMISSION RULE (RULE 19).

Rule 43 incorporates by reference Idaho Bar Commission Rule 2227 (Limited Admission/Pro Hac Vice). Bar Rule 2227 is promulgated by the Idaho State Bar and adopted by order of the Idaho Supreme Court. Bar Rule 2227 may be obtained from the Idaho State Bar, PO Box 895, Boise, ID 83701, or online at ~~www2.state.id.us/isb/~~ www.isb.idaho.gov under the "Rules" icon. Bar Rule 2227 is also available for inspection and copying at the Idaho State Law Library or at the offices of the Idaho Public Utilities Commission. (3-16-04)()

020. ~~(RESERVED)~~ DISCONTINUANCE OF TELECOMMUNICATIONS SERVICE (RULE 20).

A telephone corporation that intends to discontinue service in Idaho shall file a notice with the Commission at least ninety (90) days in advance of the date that it intends to cease operations. The telephone corporation proposing to discontinue basic local exchange or message telecommunications services shall also publish a notice of such discontinuance in a legal newspaper circulated in its service area pursuant to Section 62-612, Idaho Code. If the telephone corporation held any customer deposits or advance payments, the telephone corporation shall indicate in the notice how the deposits are to be returned to customers. See also IDAPA 31.41.01, "Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission," Section 312. ()

(BREAK IN CONTINUITY OF SECTIONS)

043. REPRESENTATION OF PARTIES ~~AT PROCEEDINGS~~ (RULE 43).

~~Recognizing that p~~Proceedings before the Commission are sometimes administrative in nature or quasi-judicial in nature, ~~appearances and representation of parties at hearing shall be as follows:~~ (3-16-04)()

01. Administrative Proceedings. Administrative proceedings before the Commission include matters such as the filing of tariff schedules, tariff advices, price lists, certificates to provide local exchange service, interconnection agreements, rulemaking, written comments in modified procedure, or written comments provided at a customer hearing. These filings may be made by a natural person pro se, a partner in a partnership, an employee or officer of a corporation, or a licensed attorney. ()

02. Quasi-Judicial Proceedings. The representation of parties at quasi-judicial proceedings for the purpose of adjudicating the legal rights or duties of a party is restricted as set out below. Quasi-judicial proceedings before the Commission include matters such as formal complaints, petitions, motions, applications for modified procedure or technical/evidentiary hearings. Representation of parties of these types of proceedings shall be as follows: ()

01a. Natural Person. ~~A natural person must~~ may represent himself or herself or be represented by a duly authorized employee, or an licensed attorney. (3-16-04)()

02b. Partnership. ~~A partnership must~~ or corporation shall be represented by a ~~partner, duly authorized employee, or an~~ licensed attorney. (7-1-93)()

03. Corporation. ~~A corporation must be represented by an officer, duly authorized employee, or an attorney.~~ (7-1-93)

04c. Other Entity. ~~A municipal corporation; a state, federal, tribal, or local government agency; or entity; an unincorporated association; or a non-profit organization, must~~ or other entity shall be represented by ~~an officer, a duly authorized employee or an~~ licensed attorney. (7-1-93)()

053. Attorney Representation. Only an active member of the Idaho State Bar may represent a party as an attorney except as provided by Idaho Bar Commission Rule 2227 (Limited Admission/Pro Hac Vice). The Commission adopts by incorporation Bar Rule 2227 as modified below. (3-16-04)(____)

a. ~~Given the administrative nature of many proceedings, limited admission by out-of-state attorneys will not be necessary in conjunction with administrative filings such as tariff schedules, tariff advices, price lists, certificates to provide local exchange service, and interconnection agreements proceedings.~~ Out-of-state attorneys representing the same party in one (1) or more quasi-judicial cases (such as formal complaints, motions, petitions, and applications that request modified procedure or an evidentiary hearing), proceedings must request limited admission at least one (1) time per calendar year. (3-16-04)(____)

b. An attorney applying for limited admission to appear before the Commission in a representative capacity shall file a written motion with the Commission Secretary and serve a copy on all parties. The motion shall be substantially in the form set out in Bar Rule 2227(1) with references to the Commission instead of the court. (3-16-04)(____)

c. A copy of the written motion shall be submitted to the Idaho State Bar accompanied by the fee prescribed by in Bar Rule 2227(j). (3-16-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

121. FORM AND CONTENTS OF APPLICATION TO CHANGE RATES (RULE 121).

01. Utility Applications to Change Rates. Applications by any public utility subject to Title 61, Idaho Code, to increase, decrease or change any rate, fare, toll, rental or charge or any classification, contract, practice, rule or regulation resulting in any such increase, decrease or change must include the following data: (4-5-00)(____)

a. An exhibit showing in full each proposed change in rates, tolls, rentals, charges, rules or regulation by striking over proposed deletions to existing tariffs and underlining proposed additions or amendments to existing tariffs, except applications to increase or decrease all or almost all rates and charges by a uniform percentage or by a uniform amount may be made by filing a tariff listing the proposed change and all unchanged rates and charges or rates and charges not changed by a uniform percentage or a uniform amount, or by use of another designation previously approved by the Commission that clearly calls attention to all proposed changes in numbers or wording. (7-1-93)

b. If the application is subject to Rule 122, a complete justification of the proposed increase in the form of testimony and exhibits or a narrative exposition. (7-1-93)

c. If the application is subject to Rule 122, ~~when a general change in recurring rates is proposed,~~ a statement showing how the application has been brought to the attention of affected customers ~~under IDAPA 31.21.02.102 or 31.41.02.102~~ and a copy of the press release and customer notice required by Rule 125. (7-1-93)(____)

d. A statement that the applicant stands ready for immediate consideration of the application. (7-1-93)

e. If the application is subject to Rule 122, testimony and exhibits showing financial statements, cost of capital and appropriate cost of service studies. (7-1-93)

f. Workpapers or documentation showing how test year data were adjusted. (7-1-93)

g. If the applicant provides utility service in states other than Idaho or utility service subject to federal regulation, a jurisdictional separation of all investments, revenues and expenses allocated or assigned in whole or in part to Idaho intrastate utility business regulated by this Commission showing allocations or assignments to Idaho. (7-1-93)

02. Proposals Based upon Computer Modeling. In addition, in any application in which a computer model is used to represent or simulate processes from which the revenue requirement is derived or upon which allocations of the revenue requirement to different customer classes are based, complete documentation of all those computer models must be supplied to the Staff, upon request, and be available in the utility's office or other depository. The Staff may request that the computer model itself be provided. A computer model includes the representation or simulation of a process, but does not mean or include the compilation of actual data. The application must state that the documentation of the models already on file in the applicant's office or other depository fully describes the models or that necessary updates or additions to previous documentation that will fully describe the models is on file and will be supplied on request. (4-5-00)

03. Grounds for Returning or Dismissing Application. Failure to comply with Rule 121.01 and 121.02 of this rule is grounds to return or dismiss an application under Rule 65. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

125. NOTICES TO CUSTOMERS OF PROPOSED CHANGES IN RATES (RULE 125).

01. Customer Notice of a Change in Rates. ()

a. If a utility is requesting a rate increase, the utility shall issue a customer notice to each customer. The customer notice shall include a brief explanation of the utility's need for additional revenue and the dollar amount requested. The notice shall give the proposed overall percentage change from current rates as well as the proposed percentage increase in revenue for each major customer class. ()

b. If the utility is requesting a rate decrease, the utility shall issue a customer notice to each customer. The customer notice shall include a brief explanation of the reason for the decrease, the overall dollar amount of the proposed decrease, and the proposed percentage decrease for each major customer class. ()

c. The customer notice shall make it clear that the application is a proposal, subject to public review and a Commission decision. It shall also inform customers that a copy of the utility's application is available for public review at the offices of both the Commission and the utility, and on the Commission's homepage. ~~(5-8-09)~~()

02. Timing of Notice for Trackers or Annual Cost Adjustments. Tracker adjustments occasioned by federal action that result in an increase or decrease in rates may be brought to the attention of customers in compliance with this rule after approval by the Commission. ~~At~~ Other tracker or annual cost adjustment cases that result in an increase in rates remain subject to the requirements of advance notice contained in this rule. Other tracker or annual cost adjustment cases that result in a decrease in rates may be brought to the attention of customers in compliance with this rule after being approved by the Commission. ~~(5-8-09)~~()

03. Distribution of Customer Notices. The customer notices referred to in Subsection 125.01 may be mailed to customers as bill stuffers over the course of a billing cycle or may be contained in additional comment pages to the customer's monthly bill. If additional comment pages are used, the information required by this rule is to be clearly identified, easily understood, and pertain only to the proposed rate change. (5-8-09)

04. Press Release. In instances covered by Subsection 125.01, the utility shall also send a press release containing, at minimum, the same information presented in the customer notices to all newspapers, radio, and television stations listed on the Commission's news organization list for that utility. The press releases shall be mailed or delivered simultaneously with filing of the application. (5-8-09)

05. Filing of a Press Release and Customer Notice. A copy of the press release and customer notice shall be filed with the application. (5-8-09)

must be filed on eight and one-half by eleven inch (8-1/2" x 11") paper unless it is impractical to make them that size. Exhibits accompanying prepared testimony must comply with Rule 267. (7-1-93)

04. Number of Copies -- Filing and Service. Unless otherwise provided by order, notice or agreement of the parties, nine (9) legible copies of prepared testimony and exhibits must be filed with the Commission Secretary and copies filed on all parties pursuant to Rules 61, 62, 63 and 64 at least fourteen (14) days before the hearing at which they will be presented. The original, if there is an original, or one (1) of the copies, if there is not, must be specifically designated as the reporter's copy by cover sheet, attached note or otherwise, and be included with the copies filed with the Commission Secretary. In special circumstances, notice or order may provide that the reporter's copy of prepared testimony and exhibits be served directly on the reporter rather than the Commission Secretary. (7-1-93)

05. Computer-Searchable Copies of Testimony. In addition to the paper copies of prepared testimony, the Commission Secretary may also require or the parties may agree that some or all of the prepared testimony to be submitted to the Secretary, parties and the reporter in computer searchable CD-ROM without password protection. The CD-ROM shall be in ~~standard ASCII format~~, Adobe Acrobat (PDF); or other searchable format agreed upon by the reporter and the parties. Each CD-ROM shall be labeled with the Commission's case number, case name, the name of each witness and the sponsoring party. (~~5-8-09~~)()

(BREAK IN CONTINUITY OF SECTIONS)

286. TRANSCRIPTS (RULE 286).

01. Form of Transcripts -- Cover Sheet. Transcripts must be prepared on white eight and one-half by eleven inch (8 1/2" x 11") paper. The lines of each page shall be double-spaced with a minimum of twenty-five (25) lines and a maximum of thirty (30) lines per page. Quotations, citations and parenthetical notes may be single-spaced. Each line shall be numbered on the left margin. The cover page of each volume of transcript must show the title of the proceeding, the case number, the presiding officer, the time and place of hearing, and other information as shown in the following example:

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

(TITLE OF PROCEEDING))
CASE NO. XXX-X-XX-XX)
)
)

(COMMISSIONER Able Baker, Presiding)

(HEARING OFFICER Charlie Dog, Presiding)

(Date, e.g., January 21, 1983)

(Hearing Room, e.g., Commission Hearing Room)

(Address, e.g., 472 West Washington, Boise, Idaho)

(~~7-1-93~~)()

02. Volumes of Transcript -- Indices to Volumes. Each day of hearing must be transcribed in a volume or volumes separate from other days of hearing. Each volume of transcript must begin with a list of the parties who appeared that day and their representatives at hearing that day. This list must be followed with a list of all witnesses whose testimony is reported in that volume, showing the pages at which each witness's testimony begins, what party (if any) called the witness, the pages upon which each other party's examination begins, the pages upon which each Commissioner's or hearing examiner's examination begins, and the pages upon which redirect

examination or any party's, Commissioner's or hearing examiner's re-examination begins. These lists must be followed with a list showing all exhibits identified in that volume of transcript (including exhibits accompanying prepared testimony), the pages upon which they are first identified, and, if any exhibits are denied admission, the pages upon which the exhibits are denied admission. (7-1-93)

03. Matters Included in Transcript. The transcript must contain all discussions on the record while the hearing is in order. Unless otherwise directed by the Commission, the presiding officer, or the Commission Secretary, prepared testimony must be included in the transcript without change or retyping. Witness's corrections to prepared testimony should be made by distributing replacement pages to the reporter and describing those corrections on the record and/or distributing an errata sheet; unless otherwise directed, no corrections other than replacement pages will be made in the prepared testimony before it is incorporated in the transcript, except the reporter may make minor corrections by interlineation in the prepared testimony. Witnesses may have seven (7) days after hearing to distribute replacement pages to all parties and to the reporter, unless the Commission, the presiding officer or the Commission Secretary otherwise directs. (7-1-93)

04. Marginal Notes. The testimony of all witnesses reported in the transcript must be designated in the lower right margin by the witness's surname and the party sponsoring the witness's testimony. Witnesses not sponsored by any party must be designated "Public." The type of testimony must be shown following the witness's surname as "Di" (direct or redirect), "X" (examination by any party not sponsoring the witness), or "Com" (examination by a Commissioner or hearing examiner). Examples of the designations required by this Rule follow:

Accountant, Di;	Accountant, Com; Ratepayer, X
ABC Company	ABC Company Public

Discussions on the record that are not testimony or examination may be labeled "argument," "decision," "colloquy," etc., to describe what is reported. (7-1-93)

05. Volume Size -- Number of Pages. Transcript volumes should not exceed three hundred (300) pages unless the transcript can be completed in three hundred fifty (350) pages or less. Transcript volumes and pages of all proceedings on the record, including prehearing conferences, hearings, arguments, and any other proceedings on the record, must be numbered consecutively. For example, if a prehearing conference on the record preceded a hearing, the transcript volume and page numbers of the hearing would be numbered consecutively with that of the prehearing conference. (3-16-04)

06. Number of Copies -- Binding. The reporter shall prepare an original and one (1) copy of the transcript for the Commission. The original of each transcript shall be filed with the Commission Secretary unbound but each volume shall be separated (if applicable). Copies of the transcript shall be fastened at the left margin in spiral or plastic-type binding, so as to open as flat as possible. (3-16-04)

07. Compressed Transcript. Any party may request a compressed transcript having no more than four (4) pages of regular transcript on a page. Each volume of compressed transcript shall contain no more than two hundred (200) pages unless the transcript can be completed in two hundred fifty (250) pages or less. A compressed transcript may be duplexed. The pagination shall be horizontal as follows:

<u>1</u>	<u>2</u>
<u>3</u>	<u>4</u>

()

08. Computer-Searchable Transcript. Any party may request a computer-searchable disk of the written transcript. The disk shall be in Adobe Acrobat (PDF) or other searchable format agreed upon by the reporter and the party ordering the disk. ()

079. Purchase of Transcript. Any party or other person may request and pay for a copy of a transcript or portions of the transcript from the reporter. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

301. FAILURE TO ANSWER OR APPEAR AT HEARING -- DEFAULTS (RULE 301).

After an applicant's, petitioner's, complainant's or moving party's failure to appear at the time and place set for hearing, the Commission may dismiss the petition, application, complaint or motion. When a respondent that has been properly served fails to answer or appear at hearing, the Commission may order any relief against the respondent authorized by law. (7-1-93)

IDAPA 37 - IDAHO DEPARTMENT OF WATER RESOURCES

37.03.10 - WELL DRILLER LICENSING RULES

DOCKET NO. 37-0310-1001

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 42-238(6), Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

Friday - July 9, 2010 - 9:00 a.m.

**IDAHO DEPARTMENT OF WATER RESOURCES
6th Floor Conference Room D
322 East Front Street, Boise, Idaho**

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

Persons wishing to participate in the rule making process may attend the public meeting and may submit written comments to the Department by Friday July 16, 2010.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Continuing education credits required for license renewal for licensed drillers will be reduced from the current sixteen units to fourteen units to coincide with the number of credits available through the various seminars and workshops.

Definitions will be updated to be consistent with those found IDAPA 37.03.09, "Well Construction Standards Rules", updated in 2009.

Application requirements relating to compliance history of the applicant renewing or obtaining a license will be updated consistent with Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Chad Hersley at 208-287-4930.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Friday July 16, 2010.

DATED this 15th day of June, 2010.

Chad F. Hersley, P.G., Technical Hydrogeologist
Ground Water Protection Section
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720
Phone: 208-287-4930; FAX: 208-287-6700

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
THE PORTNEUF RIVER TMDL REVISION AND ADDENDUM (HUC 17040208)

DOCKET NO. 58-0000-1001

NOTICE OF FINAL DECISION

AUTHORITY: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Portneuf River Total Maximum Daily Load (TMDL) Revision and Addendum (HUC 17040208).

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Portneuf River Total Maximum Daily Load (TMDL) Revision and Addendum. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Portneuf River Total Maximum Daily Load (TMDL) Revision and Addendum (HUC 17040208) addresses ten (10) assessment units on Idaho's 2008 Section 303(d) list in the Portneuf River Basin. DEQ completed TMDLs for ten (10) assessment units deemed water quality impaired. Load allocations were revised for five (5) other assessment units with existing EPA approved TMDLs. One (1) unlisted but impaired assessment unit received a TMDL. DEQ has submitted this TMDL Revision and Addendum to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at http://www.deq.idaho.gov/water/data_reports/surface_water/tmdls/portneuf_river/portneuf_river.cfm or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, marti.bridges@deq.idaho.gov.

Dated this 1st day of June, 2010.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
THE JORDAN CREEK SUBBASIN ASSESSMENT AND TMDLS (HUC ID17050108)

DOCKET NO. 58-0000-1002

NOTICE OF FINAL DECISION

AUTHORITY: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Jordan Creek Total Maximum Daily Loads (TMDLs).

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Jordan Creek TMDLs. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Jordan Creek TMDLs (Hydrologic Unit Code 17050108) addresses twelve (12) assessment units (AUs)/pollutant combinations listed as impaired on Idaho's 2008 Section 303(d) list and two (2) unlisted but impaired AUs/pollutant combinations. DEQ completed TMDLs for all AU/pollutant combinations deemed water quality impaired. DEQ has submitted this TMDL document to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at http://www.deq.idaho.gov/water/data_reports/surface_water/tmdls/jordan_creek/jordan_creek.cfm or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, marti.bridges@deq.idaho.gov.

Dated this 8th day of June, 2010.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

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LEGAL NOTICE

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 latest publication of the state Administrative Bulletin.

*The written comment submission deadline is July 28, 2010 unless otherwise listed.
(Temp & Prop) indicates the rule is both temporary and proposed.*

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036

16-0202-1001, Rules of the Emergency Medical Services (EMS) Physician Commission. Incorporates by reference the most current edition of the EMS Physician Commission Standards Manual.

16-0301-1001, Eligibility for Health Care Assistance for Families and Children. Adds eligibility criteria for and defines a "financially deprived child."

16-0324-1001, The Medically Indigent Program - Request for Medicaid Eligibility Determination. (Temp & Prop) New rule chapter provides the requirements necessary for a hospital or county to submit applications and requests to the Department to determine Medicaid eligibility for an applicant who may be medically indigent.

16.05.06 - Criminal History and Background Checks

16-0506-1001, (Temp & Prop) Clarifies which Department rules require an individual to have a criminal history and background check; updates the list of disqualifying crimes and unconditional denials that prevent a person from receiving a CHC clearance; provides that individuals listed on the Nurse Aide and Child Protection Central registries will receive unconditional denials; and adds additional crimes to the 5-year disqualifying crimes list.

16-0506-1002, (Temp & Prop) Provides the guidelines for establishing an Idaho Child Protection Central Registry Check and adds a fee to cover the cost of providing requested background checks.

16.06.02 - Rules Governing Standards for Child Care Licensing

16-0602-1001, (Temp & Prop) Provides requirements and clarification for areas related to daycare licensing that include safety and health standards, licensure requirements, and the suspension, denial, and revocation of licenses.

16-0602-1002, (Temp & Prop) Provides requirements for licensing and inspections fees for daycare licensure.

IDAPA 17 - INDUSTRIAL COMMISSION P.O. Box 83720, Boise, ID 83720-0041

17-0205-1001, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Industrial Commission. (Temp & Prop) Conforms to statutory changes that reduce the redundancy of reporting information to the Commission of costs and fees associated with attorneys hired by injured workers.

17-0501-1001, Rules Under the Crime Victims Compensation Act. (Temp & Prop) This rulemaking implements new statutory authority for adopting a medical fee schedule for benefit payments under the Crime Victims Compensation Act.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES 1109 Main St. Ste. 220, Boise, ID 83702

24-0201-1001, Rules of the Idaho State Board of Midwifery. (Temp & Prop) Allows the Board to establish standards of conduct for licensure, renewal and reinstatement of midwives.

**IDAPA 31 - PUBLIC UTILITIES COMMISSION
PO Box 36, Boise, ID 83722-0410**

31-0101-1001, Rules of Procedure of the Idaho Public Utilities Commission. Amends the testimony and transcript Rules 231 and 286 to conform to the Supreme Court's Appellate Rules; amends Rule 43 to conform to recent Supreme Court opinions regarding the representation of partnerships, corporations and other entities in Commission proceedings; adds Rule 20 to make it easier to determine when telephone companies are no longer conducting business in Idaho; and defines "utility."

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16-0304-1001, Rules Governing the Food Stamp Program in Idaho

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02-0104-1001, Rules Governing the Idaho Preferred® Promotion Program

Dept. of Health and Welfare

16-0310-1002, Medicaid Enhanced Plan Benefits

16-0313-1002, Consumer-Directed Services

16-0411-1001, Developmental Disabilities Agencies (DDA)

Dept. of Water Resources

37-0310-1001, Well Driller Licensing Rules

SCHEDULED PUBLIC HEARINGS

16-0310-1001, Medicaid Enhanced Plan Benefits (Written Comment Period Extended)

Please refer to the Idaho Administrative Bulletin, **July 7, 2010, Volume 10-7**, for notices and text of all rulemakings, public hearings and negotiated meeting schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at www.adm.idaho.gov/adminrules/.

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306
Phone: 208-332-1820; Fax: 332-1896; Email: rulescoordinator@adm.idaho.gov

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Idaho Department of Administration
Office of the Administrative Rules Coordinator*

July 1, 1993 -- Present

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*This online index provides a history of all agency rulemakings from 1993 to the present.
It tracks all rulemaking activities on each chapter of rules and includes negotiated,
temporary, proposed, pending and final rules, public hearing notices,
vacated rulemaking notices, and executive orders of the Governor.*

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Idaho Department of Administration
Office of the Administrative Rules Coordinator*

March 29, 2010 -- July 7, 2010

*(eff. *PLR) - Final Rule Adoption Date Pending Legislative Review And Approval*

(eff. date)L - Denotes Adoption by Legislative Action

(eff. date)T - Temporary Rule Effective Date

SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)

HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)

*(This Abridged Index includes rules promulgated before March 29, 2010 that have not been
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02-0414-0902 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-10

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02-0610-0901 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

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