

# **HEALTH & WELFARE COMMITTEE**

## **ADMINISTRATIVE RULES REVIEW**

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# **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 - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, pages 16 and 17.](#)**

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

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

DATED this 27th day of September, 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](mailto:dhwrules@dhw.idaho.gov)

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

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

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

***THE FOLLOWING IS THE TEXT OF 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](http://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**

### **16.02.06 - RULES GOVERNING QUALITY ASSURANCE FOR IDAHO CLINICAL LABORATORIES**

**DOCKET NO. 16-0206-1001 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-1003, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, page 61](#).**

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

**This rulemaking has no anticipated fiscal impact to state general funds. The functions administered under these rules are 100% federally funded under the CLIA (Clinical Laboratory Improvement Amendments of 1988) grant.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact David Eisentrager at (208) 334-2235 x245.

DATED this 4th day of November, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
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(208) 334-5564 phone; (208) 334-6558 fax  
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**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-1003, Idaho Code.

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

Since the last major update of these rules in 1987, there have been significant technological changes that render much of the language in this chapter obsolete and outdated. Further, the rules do not reflect more recent changes in federal regulations, in the organizational structure of the Department's Bureau of Laboratories, and in the Bureau's current practices.

As a result, this chapter of rules is being repealed under this docket and rewritten in this Bulletin under companion Docket No. 16-0206-1002.

**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 state general funds related to this rulemaking. The functions administered under these rules are 100% federally-funded under the CLIA (Clinical Laboratory Improvement Amendments of 1988) grant.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted.

**The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [May 5, 2010, Idaho Administrative Bulletin, Volume 10-5, page 25.](#)**

**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 David Eisentrager at (208) 334-2235 x245.

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 August 25, 2010.

DATED this 9th day of July, 2010.

**IDAPA 16.02.06 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.02.06 - QUALITY ASSURANCE FOR IDAHO CLINICAL LABORATORIES**  
**DOCKET NO. 16-0206-1002 (CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-1003, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 62 through 68.](#)**

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

**This rulemaking has no anticipated fiscal impact to state general funds. The functions administered under these rules are 100% federally funded under the CLIA (Clinical Laboratory Improvement Amendments of 1988) grant.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact David Eisentrager at (208) 334-2235 x245.

DATED this 4th day of November, 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  
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**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-1003, Idaho Code.

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

Since the last major update of these rules in 1987, there have been significant technological changes that render much of the language in this chapter obsolete and outdated. Further, the rules do not reflect more recent changes in federal regulations, in the organizational structure of the Department's Bureau of Laboratories, and in the Bureau's current practices.

As a result, this chapter of rules is being completely rewritten in order to simplify, clarify, update, and modernize the content, and to revise the chapter to reflect current practice of the Department's Bureau of Laboratories. The current chapter is being repealed in this Bulletin under companion Docket No. 16-0206-1001.

**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 state general funds related to this rulemaking. The functions administered under these rules are 100% federally-funded under the CLIA (Clinical Laboratory Improvement Amendments of 1988) grant.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted.

The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [May 5, 2010, Idaho Administrative Bulletin, Volume 10-5, page 25.](#)

**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 David Eisentrager at (208) 334-2235 x245.

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 August 25, 2010.

DATED this 9th day of July, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0206-1002***

**IDAPA 16, TITLE 02, CHAPTER 06**

**16.02.06 - QUALITY ASSURANCE FOR IDAHO CLINICAL LABORATORIES**

**000. LEGAL AUTHORITY.**

Under Section 56-1003, Idaho Code, the Idaho Legislature has delegated to the Board of Health and Welfare the authority to set standards for laboratories in the state of Idaho. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.02.06, "Quality Assurance for Idaho Clinical Laboratories." ( )

**02. Scope.** These rules protect the public and individual health by requiring that all Idaho clinical laboratories develop satisfactory quality assurance programs that meet minimal standards approved by the Board. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into this chapter of rules. ( )

**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. ( )

**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. ( )

**03. Street Address.** ( )

**a.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**b.** The Idaho Bureau of Laboratories is located at 2220 Old Penitentiary Road, Boise, Idaho, 83712-8299. ( )

**04. Telephone.** ( )

**a.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**b.** The telephone number for the Idaho Bureau of Laboratories is (208) 334-2235. ( )

**05. Internet Website.** ( )

**a.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**b.** The webpage for the Department's Idaho Bureau of Laboratories (IBL) is found at <http://www.statelab.idaho.gov>. ( )

**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." ( )

**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. ( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

For the purposes of these rules, the following terms apply: ( )

**01. Board.** The Idaho Board of Health and Welfare. ( )

**02. Department.** The Idaho Department of Health and Welfare. ( )

**03. Director.** The Director of the Idaho Department of Health and Welfare, or his designee. ( )

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

**05. Laboratory Director.** The person under whose supervision the laboratory is operating. ( )

**06. Pathologist.** A physician who is: ( )

**a.** Licensed by the Idaho State Board of Medicine in accordance with IDAPA 22.01.01, “Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho”; and ( )

**b.** Board certified by the American Board of Anatomic and Clinical Pathology. ( )

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

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

**09. Reviewer.** An employee or other designated representative of the Department’s Idaho Bureau of Laboratories, who is knowledgeable and experienced in clinical laboratory methods and procedures. ( )

**011. -- 099. (RESERVED).**

**100. REGISTRATION REQUIREMENTS FOR CLINICAL LABORATORIES.**

**01. Registration Timeframes.** ( )

**a.** Every person responsible for the operation of a laboratory that performs tests on material derived from the human body must register such facility with the Department within

thirty (30) days after first accepting specimens for testing. ( )

**b.** Existing laboratories must submit a completed laboratory registration form every two (2) years and indicate any changes in laboratory operations. ( )

**02. Registration Form.** Each laboratory must submit its registration information on the Department-approved form. These forms are available upon request from the Department. Each completed registration form must include the following information: ( )

**a.** Name and location of the laboratory; ( )

**b.** Name of the laboratory director; ( )

**c.** Types of laboratory tests performed in the laboratory; and ( )

**d.** Other information requested by the Department that it deems necessary to evaluate the performance of the laboratory. ( )

**101. -- 109. (RESERVED).**

**110. EXCLUSIONS.**

**01. Other Certifying Agencies.** Laboratories will be excluded from compliance with these rules (except Sections 100 and 200) upon submission of evidence of certification from one (1) of the following agencies: ( )

**a.** Centers for Medicare and Medicaid Services (CMS), Clinical Laboratory Improvement Amendment (CLIA) certification program ([http://www.cms.gov/CLIA/01\\_Overview.asp](http://www.cms.gov/CLIA/01_Overview.asp)); ( )

**b.** College of American Pathologists; ( )

**c.** Agencies approved by CMS as accreditation organizations. To review the current list of CMS-approved accreditation organizations, go to: <http://www.cms.gov/CLIA/downloads/AO.List.pdf>; ( )

**d.** Laboratories located in hospitals approved by the Joint Commission ([http://www.jointcommission.org/AccreditationPrograms/LaboratoryServices/lab\\_facts.htm](http://www.jointcommission.org/AccreditationPrograms/LaboratoryServices/lab_facts.htm)); and ( )

**e.** Other certification programs approved by the Department. ( )

**03. Facilities and Laboratories.** The following laboratories and facilities are also excluded from compliance with this chapter: ( )

**a.** Laboratories operated for teaching or research purposes only, provided tests results are not used for diagnosis or treatment; ( )

**b.** Prosthetic dental laboratories; and ( )

- c. Facilities performing skin testing solely for detection of allergies and sensitivities. ( )

**111. -- 119. (RESERVED).**

**120. DEPARTMENT INSPECTIONS OF CLINICAL LABORATORIES.**

A qualified representative of the Department is authorized to inspect the premises and operations of all approved laboratories for the purpose of determining the adequacy of the quality control program and supervision of each laboratory. ( )

**121. -- 129. (RESERVED).**

**130. GENERAL REQUIREMENTS FOR CLINICAL LABORATORIES.**

**01. Laboratory Facilities.** Each laboratory must have adequate space, equipment, and supplies to perform the services offered, with accuracy, precision, and safety. ( )

**02. Records.** ( )

**a.** Laboratory records must identify the person responsible for performing the procedure. ( )

**b.** Each laboratory must maintain a suitable record of each test result for a period of at least two (2) years. Reports of tests must be filed in a manner that permits ready identification and accessibility. ( )

**c.** Laboratory records and reports must identify specimens referred to other laboratories and must identify the reference laboratory testing such referred specimens. ( )

**131. -- 149. (RESERVED).**

**150. PERSONNEL REQUIREMENTS FOR CLINICAL LABORATORIES.**

The laboratory director must ensure that the staff of the laboratory: ( )

**01. Appropriate Education, Experience, and Training.** Have appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently; ( )

**02. Sufficient in Number for the Scope and Complexity.** Are sufficient in number for the scope and complexity of the services provided; ( )

**03. In-service Training.** Receive in-service training appropriate to the type and complexity of the laboratory services offered; and ( )

**04. Procedures and Tests that are Outside the Scope of Training.** Do not perform procedures and tests that are outside the scope of training of the laboratory personnel. ( )

**151. -- 199. (RESERVED).**



**200. PROFICIENCY TESTING OF CLINICAL LABORATORIES.**

**01. Scope.** All laboratories must subscribe to, and satisfactorily participate in, a proficiency testing program that has been approved by the Department. ( )

**02. Results to the Bureau of Laboratories.** The laboratory director must furnish the Laboratory Improvement Section with copies of all proficiency testing results within thirty (30) days of receipt or make provisions for a duplicate of the results to be sent by the testing service directly to the Department. ( )

**201. -- 209. (RESERVED).**

**210. QUALITY CONTROL PROGRAM REQUIREMENTS FOR CLINICAL LABORATORIES.**

**01. Establishment of Quality Control Program.** To ensure reliability of day-to-day results, each laboratory must establish a quality control program compatible with regional and statewide practices. ( )

**02. Program Scope.** An acceptable quality control program must include the following: ( )

**a.** An effective preventive maintenance program that ensures proper functioning of all instruments and equipment; ( )

**b.** Routine testing of quality control materials along with patient specimens; ( )

**c.** Quality control checks on reagents and media utilized in the performance of tests; ( )

**d.** Maintenance of quality control records that will enable determination of reliability of all procedures performed. ( )

**211. -- 219. (RESERVED).**

**220. DEPARTMENT APPROVAL OF CLINICAL LABORATORIES.**

The Department will approve clinical laboratories for performance of tests on material from the human body if the laboratory meets the minimum standards specified in these regulations. ( )

**221. -- 229. (RESERVED).**

**230. DEPARTMENT REVOCATION OF APPROVAL.**

The Department may revoke approval, either in total or in part, for the following reasons: ( )

**01. Failure to Participate in Proficiency Testing.** The approved laboratory fails to participate in a proficiency testing program as outlined in Section 200. ( )

**02. Failure to Participate in Quality Control.** The approved laboratory fails to implement a quality control program as outlined in Section 210. ( )

**03. Failure to Obtain Satisfactory Results.** The Department, through the quality review process, determines that the approved laboratory has failed to obtain satisfactory results on two (2) consecutive or on two (2) out of three (3) consecutive sets of proficiency test program specimens in one (1) or more testing categories. ( )

**04. Failure to Submit Documentation.** Failure to submit documentation of corrective action as indicated in Subsection 240.02. ( )

**231. -- 239. (RESERVED).**

**240. REVOCATION PROCEDURE.**

**01. Unacceptable Results.** Laboratories that fail to obtain passing results on two (2) consecutive proficiency testing events, or two (2) out of three (3) events, will be required to submit documentation of corrective action within fifteen (15) working days after receipt of the notification of the failures. Evaluation of proficiency testing results may overlap from one year to the next. ( )

**02. Corrective Action.** Upon receipt of documentation of corrective action, a reviewer will determine the adequacy of the action taken. If, in the opinion of the reviewer, the corrective action is not adequate, the laboratory will be required to submit to an on-site inspection that may include on-site testing of unknown samples. ( )

**03. On-Site Inspection.** If the results of the on-site inspection indicate that the laboratory's performance is unacceptable in one or more testing categories, the approval to perform the test(s) in question will be revoked. ( )

**04. Satisfactory Performance.** The laboratory will continue to be approved for performance of all test procedures for which it has demonstrated satisfactory performance. ( )

**05. Other Deficiencies.** Failure to comply with other provisions of these rules may invoke revocation procedures. ( )

**241. -- 249. (RESERVED).**

**250. RENEWAL OF APPROVAL OF TEST OR TESTS WHICH HAVE BEEN DISAPPROVED.**

**01. Renewal Granted.** ( )

**a.** A laboratory that has lost approval to perform certain tests for reasons outlined in Section 240 may gain reapproval by documenting corrective action taken, and by requesting the Department review the unacceptable performance and the corrective action taken. ( )

**b.** Within ten (10) days after completion of this review, the reviewer will submit his

report to the Chief of the Bureau of Laboratories. ( )

c. Upon determination that corrections leading to satisfactory and acceptable performance have been made, the Chief of the Bureau of Laboratories may reinstate approval. ( )

**02. Renewal Denied.** If the Chief of the Bureau of Laboratories does not grant reapproval of the laboratory, he will provide the laboratory supervisor with written notice of actions to be taken to correct deficiencies. The laboratory supervisor may request a new review at any time after thirty (30) days from the date of last review. The laboratory supervisor may also file a written appeal in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 400. ( )

**251. -- 269. (RESERVED).**

**270. LIST OF APPROVED LABORATORIES.**

The Department will maintain a list of laboratories approved in accordance with this chapter. This list must include the name and address of each approved laboratory, and the name of the person directing the laboratory. ( )

**271. -- 299. (RESERVED).**

**300. PENALTY FOR FAILURE TO REGISTER OR OPERATION OF A NONAPPROVED CLINICAL LABORATORY.**

Failure to register a clinical laboratory, operation of a nonapproved clinical laboratory, or performance of unapproved testing constitutes a violation of these rules. Any violation of these rules constitutes a misdemeanor under Section 56-1008, Idaho Code. ( )

**301. -- 999. (RESERVED).**

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.02.11 - IMMUNIZATION REQUIREMENTS FOR CHILDREN ATTENDING LICENSED DAYCARE FACILITIES

DOCKET NO. 16-0211-1001

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

**The Department is amending the proposed rule to allow the Regulatory Authority, in the case of a vaccine shortage or an emergency situation, to temporarily suspend an immunization requirement for the length of time needed to remedy the vaccine shortage or emergency situation. Also, the exclusion criteria is being clarified for noncompliance.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 1, 2010, Idaho Administrative Bulletin, Vol. 10-09, pages 141 through 146.**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Carmela Kerns-Gupta at (208) 334-6994.

DATED this 4th day of November, 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  
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**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-1118, Idaho Code.

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

<b>Thursday, September 9, 2010 6:00 p.m. MDT</b>	<b>Tuesday, September 14, 2010 6 p.m. MDT</b>	<b>Thursday, September 16, 2010 6:00 p.m. PDT</b>
<b>Central District Health Dept. 707 N Armstrong Place Immunization Lobby Boise, ID</b>	<b>Eastern ID Public Health Dept. 1250 Hollipark Dr. North Conf. Rm Idaho Falls, ID</b>	<b>Red Lion Hotel 621 21st Street Port One - Conf. Rm. Lewiston, ID</b>

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

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

**In an effort to increase the number of children who are fully protected from preventable diseases, the Department is amending these rules to increase the number of vaccines required for children attending licensed daycare facilities. The changes to these rules will help protect children from additional vaccine-preventable diseases, provide a conditional attendance clause for children who are in the process of receiving required vaccines, provide clarification on exclusion of children from attendance, and update existing language to match current practices. Parents who choose not to immunize their children will still be able to sign an exemption form for medical, religious, or other reasons.**

**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 anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with the following:

**Idaho Public Health Districts, Idaho Medical Association (IMA), American Academy of Pediatrics - Idaho chapter, American Academy of Family Physicians - Idaho chapter, IdahoSTARS, Idaho Child Care Program staff (ICCP), and the Idaho Immunization**

**Coalition.**

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code.

The “Recommended Immunization Schedules for Persons Aged 0 through 18 Years -- United States, 2010,” is being incorporated by reference into these rules because it contains the national standard for immunization schedules and is regularly updated to reflect best practices and to give it the force and effect of law. The document is not being republished in this chapter of rules due to its length and format and because of the cost of republication.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0211-1001**

**004. INCORPORATION BY REFERENCE.**

~~No documents have been incorporated by reference in this chapter of rules.~~ The “Recommended Immunization Schedules for Persons Aged 0 Through 18 Years -- United States, 2010,” are incorporated by reference for this chapter of rules. Published in the Morbidity and Mortality Weekly Report, January 8, 2010, Vol. 58 (51 and 52), by the Centers for Disease Control and Prevention as recommended by the Advisory Committee on Immunization Practices (ACIP). This document is referred to in this chapter of rules as “ACIP Recommended Schedule.” These schedules may be obtained from the Department or viewed online at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5851a6.htm>. (4-6-05)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. ACIP.** The Center~~s~~ for Disease Control and Prevention’s Advisory Committee on Immunization Practices. (4-6-05)( )

**02. Board.** The Idaho State Board of Health and Welfare. (12-31-91)

**03. Board of Medicine.** The Idaho State Board of Medicine. (5-24-91)

**04. Child.** A person less than ~~twelve~~ thirteen (1~~2~~3) years of age, as defined in Section 39-1102, Idaho Code. (5-24-91)( )

**05. Department.** The Idaho Department of Health and Welfare. (5-24-91)

**06. Director.** The Director of the Idaho Department of Health and Welfare, or designated individual. (12-31-91)

~~**07. Immunization Document.** A medical or other written record initiated and retained by a licensed daycare facility which gives the month, day and year of each immunization a child has received. (5-24-91)~~

**087. Immunization Record.** An electronic medical health record, an immunization registry document, or a written ~~document signed~~ immunization certificate confirmed by a ~~physician~~ licensed health care professional or a physician's representative which states the month, day, and year of each immunization a person has received. (5-24-91)( )

**098. Initial Attendance.** The first admission of a child to any licensed daycare facility in Idaho. (5-24-91)

~~**109. Laboratory Proof.** A certificate from a licensed medical laboratory stating the type of test performed, the date of each test and the results, accompanied by a physician's statement indicating the child is immune. Tests performed must meet the requirements ~~of~~ in IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." (4-6-05)( )~~

~~**110. Licensed Daycare Facility.** Any Idaho daycare facility maintained by an individual, organization or corporation and licensed by an authorized governmental entity to provide care to children. (5-24-91)~~

~~**121. Licensed Daycare Facility Operator.** Any person who owns and operates or is designated by an individual, organization or corporation to manage the day-to-day operation of a licensed daycare facility described in Subsection 010.10 of these rules. (4-6-05)~~

**12. Licensed Health Care Professional.** A practitioner, licensed in the State of Idaho by the Board overseeing the practitioner's license, or by a similar body in another state or jurisdiction within the United States. The practitioner's scope of practice for licensure must allow for the ordering of immunizations and writing of prescriptions, or the practitioner must be under the direction of a licensed physician. Licensed health care professionals who may provide for immunization requirements include: medical doctors, osteopaths, nurse practitioners, physicians' assistants, licensed professional nurses, registered nurses, and pharmacists. Other persons authorized by law to practice any of the healing arts, shall not be considered licensed health care professionals for the purposes of this chapter. ( )

**13. Parent, Custodian, or Guardian.** The legal parent, custodian, or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (5-24-91)

~~14. **Pertussis.** An infectious agent, *Bordetella pertussis*, that causes the disease commonly known as whooping cough. (4-6-05)~~

**154. Physician.** A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a similar body in another state or jurisdiction within the United States, to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine. (4-6-05)( )

**165. Physician's Representative.** Any person appointed by or vested with the authority to act on behalf of a physician in matters concerning health. (5-24-91)

**176. Regulatory Authority.** The Director of the Idaho Department of Health and Welfare or the Director's designee. (5-24-91)

011. -- 099. (RESERVED).

**100. IMMUNIZATION ~~PROGRAM~~ REQUIREMENTS.**

All immunizations listed in Subsections 100.01 through 100.059 of these rules, are required of children who ~~are to~~ attend licensed daycare facilities. These immunizations must be administered age appropriately according to the "General ACIP Recommendations on Immunizations Schedule," ~~established by the ACIP~~ incorporated by reference in Section 004 of these rules, unless fewer doses are medically recommended by a physician. These recommendations are available from the Department. (4-6-05)( )

**01. Diphtheria, Tetanus and A-Cellular Pertussis (DTaP) Vaccine.** ~~Five (5) doses of DTaP (Diphtheria, Tetanus and a cellular Pertussis) vaccine are required and must be administered to the child unless fewer doses are medically recommended.~~ (4-6-05)( )

**02. Polio Vaccine.** ~~Three (3) doses of polio vaccine are required and must be administered to the child unless fewer doses are medically recommended. See Section 110 of these rules.~~ (4-6-05)( )

**03. Measles, ~~Rubella and~~ Mumps, and Rubella (MMR) Vaccine.** ~~Two (2) doses of measles, rubella and mumps vaccine are required and must be administered to the child according to ACIP recommendations.~~ (4-6-05)( )

**04. Haemophilus Influenza Type B (HIB) Vaccine.** ~~Haemophilus influenza type b (HIB) vaccine is required and must be administered to the child according to ACIP recommendations.~~ (4-6-05)( )

**05. Hepatitis B Vaccine.** ~~Three (3) doses of hepatitis B vaccine administered to children born after November 22, 1991, unless fewer doses are medically recommended. See Section 110 of these rules.~~ (4-6-05)( )

**06. Varicella Vaccine.** ( )

**07. Pneumococcal Vaccine.** ( )

**08. Rotavirus Vaccine.** ( )



**09. Hepatitis A Vaccine.** ( )

**101. ~~TIME PERIOD FOR COMPLIANCE.~~**

The *legal* parent, custodian, or guardian of a child must comply with the provisions contained in this chapter within fourteen (14) days of initial attendance to any licensed daycare facility in Idaho. (4-6-05)( )

**102. EVIDENCE OF IMMUNIZATION STATUS.**

**01. Immunization ~~Certification Statement~~ Record.** Within the deadlines established in Section 101 of these rules, a *legal* parent, custodian, or guardian of each child must present to the licensed daycare facility operator an immunization record ~~or certification statement signed by a physician or a physician's representative stating the type, number and dates of immunizations received.~~ (4-6-05)( )

**02. Schedule of Intended Immunizations Form.** A child who has received at least one (1) dose of each required vaccine and is currently on schedule for subsequent immunizations may conditionally attend daycare when a schedule of intended immunizations form is provided. The licensed daycare facility operator, ~~within fourteen (14) days of initial attendance,~~ must have a statement schedule of intended immunizations form completed by a *legal* parent, custodian, or guardian of for any child who is not immunized, excepted, or exempted, and who is in the process of receiving, or has been scheduled to receive, the required immunizations. ~~This statement~~ A form provided by the Department, or one similar, must include the following information: (4-6-05)( )

- a. Name and age date of birth of child; (4-6-05)( )
- b. Type, number and dates of scheduled immunizations to be administered; (4-6-05)( )
- c. Signature of the *legal* parent, custodian, or guardian ~~providing the information;~~ (4-6-05)( )  
and
- d. Signature of a ~~physician or physician's representative~~ licensed health care professional providing care to the child. (5-24-91)( )

**103. -- 104. (RESERVED).**

**105. EXCEPTIONS S TO IMMUNIZATION REQUIREMENT ~~FOR THE APPLICABLE DISEASE.~~**

A child who meets one (1) or ~~both~~ more of the following conditions, when supporting documentation is in the possession of the licensed daycare facility operator, will not be required to ~~undergo~~ receive the required immunizations: in order to attend the licensed daycare facility. (4-6-05)( )

**01. Laboratory Proof.** A child who has laboratory proof of immunity to any of the ~~nine (9)~~ childhood diseases listed in Section 100 of these rules, will not be required to ~~undergo~~

receive the required immunizations for which the child is immune. (4-6-05)( )

**02. Disease Diagnosis.** A child who has a statement signed by a licensed physician health care professional stating the child has had measles (rubeola) or mumps varicella (chickenpox) disease and diagnosed by the physician a licensed health care professional upon personal examination will not be required to undergo receive the required immunizations for the diagnosed disease. (4-6-05)( )

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

106. -- 109. (RESERVED).

**110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of the licensed daycare facility operator, a child who meets one (1) or both of the following conditions in Subsections 110.01 and 110.02 of this rule, will be exempt from the required immunizations. (4-6-05)( )

**01. Life or Health Endangering Circumstances.** A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered; or (4-6-05)( )

**02. Religious or Other Objections.** A signed statement of the legal parent, custodian, or guardian on a form provided by the Department or one containing similar information, and that includes the following: (4-6-05)( )

- a. Name of child, date of birth; and (5-24-91)( )
- b. A statement of objection on religious or other grounds. (5-24-91)

111. -- ~~104~~9. (RESERVED).

**150. EXCLUSION CRITERIA.**

**01. Noncompliance.** A child meeting any one (1) of the following conditions must be excluded by the licensed daycare facility operator: ( )

**a.** Has received fewer than the required number of doses of immunizations described in Section 100 of these rules, and does not have the remaining required vaccine doses scheduled; ( )

**b.** Has failed to continue to receive immunizations as provided on the schedule of intended immunizations form described in Subsection 102.02 of these rules; ( )

c. Has received one or more doses at less than the minimum interval or less than the minimum age as recommended by the ACIP under Section 004; ( )

d. Has not received any doses of the required immunization and does not have a valid exception or exemption described in Sections 105 and 110 of these rules; or ( )

e. Has no immunization record on file at the daycare facility. ( )

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

**151. -- 199. (RESERVED).**

**200. DOCUMENTATION AND RETENTION OF IMMUNIZATIONS ~~DATA~~ RECORD BY LICENSED DAYCARE FACILITY OPERATORS.**

**01. Provision of Information.** The licensed daycare facility operator will provide to the *legal* parent, custodian, or guardian, information on immunization requirements and the ACIP recommended immunization schedule. (4-6-05)( )

~~**02. Immunization Document.** The licensed daycare facility operator will copy the immunization data from the child's immunization record to a daycare immunization document or have on file a true and correct copy of the child's immunization record. This immunization document must include the month, day and year of each immunization the child has received.~~ (4-6-05)

**032. Immunization ~~Document~~ Record Retention.** The immunization documentation described in ~~Sub~~section ~~200.102~~ of these rules, must be retained by the licensed daycare facility ~~on all children~~ for each child as long as the child attends the licensed daycare facility plus one (1) year after last attendance. (4-6-05)( )

**201. -- 299. (RESERVED).**

**300. INSPECTIONS ~~BY PUBLIC DISTRICT HEALTH DEPARTMENTS.~~**

**01. Compliance Inspection.** The regulatory authority will verify that the immunization ~~document~~ record described in ~~Sub~~section ~~200.02~~ 010 of these rules, is *initiated and* retained in the licensed daycare facility. (4-6-05)( )

**02. Recording of Violation.** Following an inspection which reveals a violation of this chapter by a licensed daycare facility, the regulatory authority will record the violations in writing and provide a copy to the licensed daycare facility operator. (4-6-05)

**03. Response to Violation.** The licensed daycare facility operator will submit a written report to the regulatory authority within thirty (30) days following the inspection stating that the specified violations have been corrected. (4-6-05)

**04. Failure to Respond.** The regulatory authority will report in writing to the licensing authority any violations recorded in Subsection 300.02 of ~~these~~ **this** rules, to which a licensed daycare facility operator has not responded as required by Subsection 300.03 of ~~these~~ **this** rules. (4-6-05)( )

**301. -- 309. (RESERVED).**

**310. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.**

**01. ~~Noncompliance.~~ ~~Licensed daycare facility operators in Idaho must exclude any child who is not in compliance with this chapter within fourteen (14) days of initial attendance in their daycare facility.~~ **Enforcement** The regulatory authority may exclude any child who does not meet the requirements in this chapter and who has not been excluded from the licensed daycare facility as required in Section 150 of these rules. (4-6-05)( )**

**02. Length of Exclusion.** Any child excluded from a licensed daycare facility in Idaho as required in Subsection 310.01 of ~~these~~ **this** rules, may not be readmitted to the facility until they ~~are~~ **child is** in compliance with the requirements of this chapter. (4-6-05)( )

**311. -- 399. (RESERVED).**

**400. TECHNICAL ASSISTANCE.**

**01. Random Evaluations.** A representative of the Department will randomly select and visit licensed daycare facilities in Idaho to evaluate the facility files for the following: (4-6-05)

- a. Immunization ~~documents~~ **record** described in ~~Subsection 200.02~~ **010** of these rules; (4-6-05)( )
- b. Exceptions documentation described in Section 105 of these rules; and (4-6-05)
- c. Exemption statements described in Section 110 of these rules. (4-6-05)

**02. Notice of Intent to Review.** A representative of the Department will inform licensed daycare facilities selected in Subsection 400.01 of ~~these~~ **this** rules, at least thirty (30) days prior to an intent to review the licensed daycare facilities' documents. (4-6-05)( )

**03. Evaluation Results.** Information will be provided to the licensed daycare facility about the results of the immunization evaluation described in Subsection 400.01 of ~~these~~ **this** rules, and the recommendations for correcting deficiencies and increasing immunity levels. (4-6-05)( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.15 - IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN

DOCKET NO. 16-0215-1001

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

**The Department is amending the proposed rule to allow the Regulatory Authority, in the case of a vaccine shortage or an emergency situation, to temporarily suspend an immunization requirement for the length of time needed to remedy the vaccine shortage or emergency situation.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 1, 2010, Idaho Administrative Bulletin, Vol. 10-09, pages 160 through 167.**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Carmela Kerns-Gupta at (208) 334-6994.

DATED this 4th day of November, 2010.

Tamara Priscock  
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  
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**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-1118, Idaho Code.

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

<b>Thursday, September 9, 2010 6:00 p.m. MDT</b>	<b>Tuesday, September 14, 2010 6:00 p.m. MDT</b>	<b>Thursday, September 16, 2010 6:00 p.m. PDT</b>
<b>Central District Health Dept. 707 N Armstrong Place Immunization Lobby Boise, ID</b>	<b>Eastern Idaho Public Health Dept. 1250 Hollipark Dr. North Conf. Rm. Idaho Falls, ID</b>	<b>Red Lion Hotel 621 21st Street Port One - Conf. Rm. Lewiston, ID</b>

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

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

**In an effort to increase the number of children who are fully protected from preventable diseases, the Department is amending these rules to increase the number of vaccines required for children attending schools in Idaho. The changes to these rules will help protect children from additional vaccine-preventable diseases, provide a conditional admission clause for children who are in the process of receiving required vaccines, provide clarification on exclusion of children from attendance, and update existing language to match current practices. Parents who choose not to immunize their children will still be able to sign an exemption form for medical, religious, or other reasons.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code:

**Informal negotiated rulemaking was conducted with the following: Idaho Public Health Districts, Idaho Medical Association (IMA), American Academy of Pediatrics - Idaho**

chapter, American Academy of Family Physicians - Idaho chapter, State Board of Education, Idaho School Boards Association, Idaho State Department of Education, School Nurses Association of Idaho (SNOI), Head Start - Friends of Family and Children, Meridian Joint District No. 2 - Nursing Services, and the Idaho Immunization Coalition.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code:

The “Recommended Immunization Schedules for Persons Aged 0 through 18 Years -- United States, 2010,” is being incorporated by reference into these rules because it contains the national standard for immunization schedules and is regularly updated to reflect best practices and to give it the force and effect of law. The document is not being republished in this chapter of rules due to its length and format and because of the cost of republication.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0215-1001***

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is, IDAPA 16.02.15, “Immunization Requirements for Idaho School Children.” (4-6-05)

**02. Scope.** These rules contain the legal requirements for the administration of an immunization program for children enrolled in grades preschool, kindergarten through twelve (12) of any Idaho public, private, or parochial school. (3-30-07)(    )

***(BREAK IN CONTINUITY OF SECTIONS)***

**004. INCORPORATION BY REFERENCE.**

~~No documents have been incorporated by reference in this chapter of rules.~~ The “Recommended Immunization Schedules for Persons Aged 0 Through 18 Years -- United States, 2010,” are incorporated by reference for this chapter of rules. Published in the Morbidity and Mortality Weekly Report, January 8, 2010, Vol. 58 (51 and 52), by the Centers for Disease Control and

Prevention as recommended by the Advisory Committee on Immunization Practices (ACIP). This document is referred to in this chapter of rules as “ACIP Recommended Schedule.” These schedules may be obtained from the Department or viewed online at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5851a6.htm>. (4-6-05)( )

(BREAK IN CONTINUITY OF SECTIONS)

**010. DEFINITIONS.**

**01. ACIP.** The Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices. (4-6-05)( )

**02. Admission.** Admission to a public, private or parochial school is: (4-2-08)

**a.** Registration of a child before attendance; or (4-2-08)

**b.** Re-entry of a child after withdrawing from previous enrollment. (4-2-08)

**c.** Transfer of a child from one (1) Idaho school to another or from schools outside Idaho. ( )

**03. Child.** A minor who is enrolled in preschool, kindergarten through grade twelve (12) in any Idaho public, private, or parochial school. (3-30-07)( )

**04. Department.** Idaho Department of Health and Welfare. (10-13-92)

**05. Immunization Record.** An electronic medical health record, an immunization registry document, or a written immunization certificate confirmed by a licensed health care professional or a physician’s representative which states the month, day, and year of each immunization a person has received. ( )

**056. Laboratory Proof.** A certificate from a licensed medical laboratory stating the type of test performed, the date of each test, and the results, accompanied by a physician’s statement indicating the child is immune. Tests performed must meet the requirements of IDAPA 16.02.06, “Rules Governing Quality Assurance for Idaho Clinical Laboratories.” (4-6-05)( )

**07. Licensed Health Care Professional.** A practitioner, licensed in the State of Idaho by the Board overseeing the practitioner’s license, or by a similar body in another state or jurisdiction within the United States. The practitioner’s scope of practice for licensure must allow for the ordering of immunizations and writing of prescriptions, or the practitioner must be under the direction of a licensed physician. Licensed health care professionals who may provide for immunization requirements include: medical doctors, osteopaths, nurse practitioners, physicians’ assistants, licensed professional nurses, registered nurses, and pharmacists. Other persons authorized by law to practice any of the healing arts, shall not be considered licensed health care professionals for the purposes of this chapter. ( )



**068. Parent, Custodian, or Guardian.** The legal parent, custodian, or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (4-6-05)

~~07. **Pertussis.** An infectious agent, *Bordetella pertussis*, that causes the disease commonly known as whooping cough. (4-6-05)~~

**089. Physician.** A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a similar body in another state or jurisdiction within the United States, to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine. (4-6-05)( )

~~0910. **Physician's Representative.** Any person appointed by, or vested with the authority to act on behalf of a physician in matters concerning health. (8-15-79)~~

**11. Preschool.** The provision of education for children before the commencement of statutory and obligatory education, differing from traditional daycare in that the emphasis is learning and development rather than enabling parents to work or pursue other activities. Preschools may include, but are not limited to, federally-funded Head Start centers, state-funded preschools, government-funded special education programs, public school preschool programs, and for-profit and not-for profit preschool programs. ( )

**102. Private or Parochial School.** Any Idaho school maintained by an individual, organization or corporation, not at public expense, and open only to children selected and admitted by the individual, organization or corporation, or to children of a certain class or possessing certain qualifications, which may or may not charge tuition fees. (8-15-79)

~~113. **Public School.** Any Idaho school maintained at the public expense and open to all children within a given district, including those responsible for the education and training of exceptional children or those schools specially chartered. (1-25-79)~~

**14. Regulatory Authority.** The Director of the Idaho Department of Health and Welfare or the Director's designee. ( )

**125. School Authority.** An authorized representative designated by the Board of Trustees of a public school or a person or body designated to act on behalf of the governing body of a private or parochial school. (8-15-79)

**011. -- 099. (RESERVED).**

**100. IMMUNIZATION ~~PROGRAM~~ REQUIREMENTS.**

All ~~h~~immunizations listed in Subsections 100.01 through 100.04 of this rule, are required of children upon admission to kindergarten through grade twelve (12) of any Idaho public, private, or parochial school. Upon admission to preschool, children must be age appropriately immunized with all immunizations listed in Subsections 100.01 through 100.03 of this rule. Immunizations must be administered according to the "General ACIP Recommendations on Immunizations Schedule," established by the ACIP or their equivalent incorporated by reference in Section 004 of these rules, unless fewer doses are medically recommended by a physician. These

recommendations are available from the Department ~~as provided in Section 004 of these rules.~~  
Exemptions from these immunization requirements are provided in Section 110 of these rules.

(4-2-08)( )

**01. ~~Measles, Mumps and Rubella (MMR)~~ Child Born on or Before September 1, 1999.** (4-2-08)

~~a. A child born after September 1, 1999, is required to have any combination of two (2) doses of the vaccines listed in Subsections 100.01.c. and 100.01.d. of this rule.~~ (4-2-08)

~~b. A child born on or before September 1, 1999, is required to have one (1) dose of either of the vaccines listed in Subsections 100.01.c. and 100.01.d. of this rule.~~ must meet the following minimum immunization requirements prior to admission for these vaccines: one (1) dose of (4-2-08)

~~c. Measles, Mumps, and Rubella (MMR); or~~ (4-2-08)

~~d. Measles, Mumps, Rubella and Varicella (MMRV).~~ four (4) doses of Diphtheria, Tetanus, Pertussis (DTaP), three (3) doses of Polio, and three (3) doses of Hepatitis B. (4-2-08)( )

**02. ~~Diphtheria and Tetanus~~ Child Born After September 1, 1999 Through September 1, 2005.** (4-2-08)

~~a. A child born after September 1, 1999, is required to have any combination of five (5) doses of the following vaccines listed in Subsections 100.02.c. through 100.02.g. of this rule. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed.~~ (4-2-08)

~~b. A child born on or before September 1, 1999, is required to have any combination of four (4) doses, of the vaccines listed in Subsections 100.02.c. through 100.02.g. of this rule.~~ through September 1, 2005, must meet the following minimum immunization requirements prior to admission for these vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of (4-2-08)

~~c. Diphtheria, Tetanus, and acellular Pertussis (DTaP—Pediatric);~~ (3-30-07)

~~d. Diphtheria, Tetanus and Pertussis (DTP);~~ (3-30-07)

~~e. Tetanus, Diphtheria and acellular Pertussis (Tdap—Adolescent);~~ (3-30-07)

~~f. Diphtheria, Tetanus (DT—Pediatric); or~~ (4-2-08)

~~g. Tetanus, Diphtheria (Td—Adolescent).~~ three (3) doses of Polio, and three (3) doses of Hepatitis B. (3-30-07)( )

**03. ~~Pertussis~~ Child Born After September 1, 2005.** (4-2-08)

~~a.~~ A child born after September 1, ~~1999~~, ~~is required to have any combination of five (5) doses of the vaccines listed in Subsections 100.03.c. through 100.03.e. of this rule. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed.~~(4-2-08)

~~b.~~ A child born on or before September 1, 1999, is required to have any combination of four (4) doses of the vaccines listed in Subsection 100.03.c. through 100.03.e. of this rule. 2005, must meet the following minimum immunization requirements prior to admission for the following vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of ~~(4-2-08)~~

~~c.~~ Diphtheria, Tetanus, and ~~acellular~~ Pertussis (DTaP—~~Pediatric~~); (4-2-08)

~~d.~~ ~~Diphtheria, Tetanus and Pertussis (DTP); or~~ (4-2-08)

~~e.~~ ~~Tetanus, Diphtheria and acellular Pertussis (Tdap—Adolescent)~~, four (4) doses of Polio, three (3) doses of Hepatitis B, two (2) doses of Hepatitis A, and two (2) doses of Varicella. (4-2-08)( )

**04.** Polio. A child is required to have three (3) doses of Polio vaccine. **Seventh Grade Immunization Requirements.** Effective with the 2011-2012 school year, and each year thereafter, in addition to the required immunizations listed in Section 100.01 through 100.03 of this rule, a child must meet the following minimum immunization requirements prior to admission into the seventh (7th) grade for these vaccines: one (1) dose of Tetanus, Diphtheria, Pertussis Booster (Tdap), and one (1) dose of Meningococcal. This requirement will be extended to: 7th - 8th grade students in 2012, 7th - 9th grade students in 2013, 7th - 10th grade students in 2014, 7th - 11th grade students in 2015, and 7th - 12th grade students in 2016. (4-2-08)( )

~~05.~~ Hepatitis B. A child born after November 22, 1991, is required to have three (3) doses of Hepatitis B vaccine. (4-2-08)

**065.** Summary of Immunization Requirements. ( )

**a.** Immunization requirements.

TABLE 100.065.a. SUMMARY OF IMMUNIZATION REQUIREMENTS			
Immunization Requirement*	Child born <u>after on or before</u> September 1, 1999	Child born <u>on or before after</u> September 1, 1999, <u>through September 1, 2005</u>	<u>Child born after September 1, 2005</u>
Measles, Mumps, and Rubella (MMR)	<del>2</del> 1 doses	<del>4</del> 2 doses	<u>2 doses</u>
Diphtheria, Tetanus, <u>Pertussis</u>	<del>5</del> 4 doses	<del>4</del> 5 doses	<u>5 doses</u>
<u>Pertussis</u>	<del>5</del> doses	<del>4</del> doses	
Polio	3 doses	3 doses	<u>4 doses</u>
Hepatitis B	3 doses	3 doses**	<u>3 doses</u>

TABLE 100.065.a. SUMMARY OF IMMUNIZATION REQUIREMENTS			
Immunization Requirement*	Child born <del>after on or before</del> <u>after</u> September 1, 1999	Child born <del>on or before</del> <u>after</u> September 1, 1999, <u>through</u> September 1, 2005	<u>Child born after September 1, 2005</u>
Hepatitis A	<u>0 doses</u>	<u>0 doses</u>	<u>2 doses</u>
Varicella	<u>0 doses</u>	<u>0 doses</u>	<u>2 doses</u>

\* Exemptions for immunization requirements are found in Section 110 of these rules.  
~~\*\* Hepatitis B - Three (3) doses unless child was born on or before November 22, 1991.~~

(4-2-08)( )

**b. Seventh grade immunization requirements.**

TABLE 100.05.b SUMMARY OF SEVENTH GRADE IMMUNIZATION REQUIREMENTS		
<u>Immunization Requirement*</u>	<u>Child admitted to 7th grade prior to 2011-2012 school year</u>	<u>Child admitted to 7th grade during 2011-2012 school year and each year thereafter</u>
<u>Tetanus, Diphtheria, Pertussis (Tdap)</u>	<u>0 doses</u>	<u>1 dose</u>
<u>Meningococcal</u>	<u>0 doses</u>	<u>1 dose</u>

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

( )

**101. ~~DEADLINE FOR COMPLIANCE.~~**

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

(4-6-05)( )

**102. EVIDENCE OF IMMUNIZATION STATUS.**

**01. Immunization ~~Certification Statement~~ Record.** Within the deadlines established in Section 101 of these rules, a legal parent, custodian, or guardian of each child must present to school authorities an immunization ~~certification statement signed by a physician or a physician's representative stating the type, number and dates of immunizations received~~ record.

(4-6-05)( )

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

~~is~~ provided by the Department, or one similar, must include the following information:

- (4-6-05)( )
- a. Name and ~~age~~ date of birth of child; (4-6-05)( )
  - b. School and grade child is enrolled in and attending; (4-6-05)
  - c. Types, numbers, and dates of scheduled immunizations to be administered; (4-6-05)( )
  - d. Signature of the legal parent, custodian, or guardian ~~providing the information~~; (10-13-92)( )
- and
- e. Signature of a ~~physician or physician's representative~~ licensed health care professional providing care to the child. (7-9-90)( )

**03. Children Admitted to School and Failing to Continue the Schedule of Intended Immunizations.** A child, who does not receive the required immunizations as scheduled in Subsection 102.02 of ~~these~~ this rules, will be excluded by school authorities until documentation of the administration of the required immunizations is provided to school authorities by the child's legal parent, custodian, or guardian. (4-6-05)( )

103. -- 104. (RESERVED).

**105. EXCEPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of school authorities at the time of admission and before attendance, a child who meets one (1) or ~~more~~ both of the following conditions, will not be required to ~~undergo~~ receive the required immunizations in order to attend school: (4-6-05)( )

**01. Laboratory Proof.** Laboratory proof of immunity to any of the ~~eight (8)~~ childhood diseases listed in Section 100 of these rules, will not be required to receive the immunization for that disease; ~~or~~ for which the child is immune. (4-6-05)( )

**02. Disease Diagnosis.** A child who has a statement signed ~~statement of~~ by a licensed ~~physician~~ health care professional stating that the child has had ~~measles or mumps~~ varicella (chickenpox) disease diagnosed by ~~the physician~~ a licensed health care professional upon personal examination, will not be required to receive the immunization for the diagnosed disease. (4-6-05)( )

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

106. -- 109. (RESERVED).

**110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of school authorities, at the time of admission and before attendance, a child who meets one (1) or both of the following conditions in Subsections 110.01 and 110.02 of this rule, will not be required to ~~undergo~~ receive the required immunizations. (4-6-05)( )

**01. Life or Health Endangering Circumstances.** A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered; ~~or~~. (4-6-05)( )

**02. Religious or Other Objections.** A signed statement of the legal parent, custodian, or guardian on a form provided by the Department ~~or one containing similar information, and that~~ includes the following: (4-6-05)( )

a. Name of child, date of birth; and (1-25-79)( )

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

**111. -- 149. (RESERVED).**

**150. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.**

**01. Noncompliance.** Any child not in compliance with this chapter upon admission to any Idaho public, private, or parochial school, will be denied attendance by school authorities, unless the child is excepted or exempted from these immunization requirements as provided in Sections 105 and 110 of these rules. The regulatory authority may exclude any child who does not meet the requirements in this chapter and who has not been excluded from school. (4-2-08)( )

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

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

**151. -- 199. (RESERVED).**

**200. REPORTS BY SCHOOL AUTHORITIES.**

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

**02. Form and Content of Report.** Each school report must include ~~The~~ following information ~~will and~~ be ~~provided~~ submitted on a Department form or electronically ~~by school~~: (4-6-05)( )

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

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1001

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 7, 2010 Idaho Administrative Bulletin, Vol. 10-7, pages 18 and 19.**

**The proposed rule added a definition of a “financially deprived child” and the eligibility criteria for a “financially deprived child” under Section 400, Aid to Families with Dependent Children (AFDC) - Related Budget Unit. The change has no impact on a person’s eligibility, and continues the Department’s current policy in compliance with federal regulations.**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathy McGill at (208) 334-4934.

DATED this 27th day of September, 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](mailto:dhwrules@dhw.idaho.gov)



**THE FOLLOWING NOTICE PUBLISHED WITH THE 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.

**THE FOLLOWING IS THE TEXT OF 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

## 16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1002

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to 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 Section 211 of the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009," and federal Public Law no. 111-118, Sec. 8120.

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

**This rulemaking provided more choices for Idaho citizens seeking health coverage for their children, and streamlined the application process for children and families whose U.S. citizenship must be verified. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 245 through 250.](#)**

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

**The total anticipated fiscal impact to the state general fund is \$120,714, which is the state's portion at the current federal match rates for this rulemaking.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathy McGill at (208) 334-4934.

DATED this 5th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**EFFECTIVE DATES:** The effective dates of these temporary rules are: **April 1, 2009, December 19, 2009, January 1, 2010, and September 1, 2010.**

**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 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, Section 211 of the “Children’s Health Insurance Program (CHIP) Reauthorization Act of 2009,” and federal Public Law no. 111-118, Sec. 8120.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

**1. This rulemaking contains two changes that provide more choices for Idaho citizens seeking health coverage for their children, and will streamline the application process for children and families whose U.S. citizenship must be verified.**

**a. This rule change will allow for any child eligible for SCHIP to be enrolled in Children’s Access Card, which means that children between the ages of 6 and 19 with family income exceeding 100% of FPL and less than or equal to 185% of FPL can also qualify for Children’s Access Card.**

**b. This rule change will allow for the U.S. citizenship and identity of first-time applicants for Medicaid and SCHIP to be verified through a data match with the Social Security Administration (SSA), when the SSA has previously verified citizenship and identity.**

**2. This rule change also updates the eligibility time period for special immigrants based on federal regulations that extended the eligibility time period.**

**3. Also added are requirements for children eligible for coverage under Title XXI SCHIP to meet the verification of U.S. citizenship and identity requirements.**

**4. Lastly, language was added stating that an individual found eligible for Medicaid will receive services for 90 days while verification of U.S. citizenship and identity are pending.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate. The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

**Number 1, as described in the descriptive summary, provides a benefit by giving additional families a choice between having the Department provide direct health coverage for their children in the form of the SCHIP program, and purchasing private health insurance for their children, with the Department subsidizing the child's premium. This rulemaking also helps participants applying for Medicaid as they will not have to make multiple trips to Department offices in order to allow Department staff to view original birth certificates or other paper documents.**

**Rule changes being made in Numbers 2, 3, and 4, stated in the descriptive summary, are required by federal legislation, i.e., Number 2 - federal Public Law no. 111-118, Sec. 8120; Number 3 and 4 - Section 211 of the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009."**

**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: None.

**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 total anticipated fiscal impact to the state general fund is \$120,714, which is the state's portion at the current federal match rates for this rulemaking.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes are due to federal regulations.

**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 Kathy McGill at (208) 334-4934.

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 October 27, 2010.

DATED this 18th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-1002**

**220. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible, an individual must be a member of one (1) of the following groups: (3-30-07)

- 01. U.S. Citizen.** A U.S. Citizen; (3-30-07)
- 02. U.S. National, National of American Samoa or Swain's Island.** A U. S. national, or a national of American Samoa or Swain's Island. (3-30-07)
- 03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)
  - a.** At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)
  - b.** The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)
  - c.** The child is under eighteen (18) years of age; (3-30-07)
  - d.** The child is a lawful permanent resident; and (3-30-07)
  - e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)
- 04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who is currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; (3-30-07)
- 05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who were honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy, or U.S. Coast Guard for a reason other than their citizenship status, or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; (3-30-07)
- 06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, who is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c), who remained continuously present in the U.S. until he became a qualified non-citizen; (3-30-07)
- 07. Non-Citizen Entering On or After August 22, 1996.** A non-citizen who entered the U.S. on or after August 22, 1996, and who is: (3-30-07)

- a.** A refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)
- b.** An asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)
- c.** An individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)
- d.** An Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-30-07)
- e.** A Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act under Section 501(e) of P.L. 96-422 (1980), and can be eligible for seven (7) years from their date of entry; (3-30-07)
- 08. Qualified Non-Citizen Entering On or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), who entered the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years; (3-30-07)
- 09. American Indian Born in Canada.** An American Indian born in Canada, under 8 U.S.C. 1359; (3-30-07)
- 10. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., who is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); (3-30-07)
- 11. Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance; and (3-30-07)
- 12. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-30-07)
- a.** Is under the age of eighteen (18) years; or (3-30-07)
- b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-30-07)
- i.** Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-30-07)
- ii.** Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

**13. Afghan Special Immigrants.** An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, ~~is eligible for eight (8) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status.~~ (3-29-10)( )

**14. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, ~~is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status.~~ (5-8-09)( )

**221. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.**

Any individual who participates in a Title XIX Medicaid or Title XXI SCHIP funded program must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Section 225 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. (3-30-07)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**224. ELIGIBILITY FOR APPLICANTS AND MEDICAID PARTICIPANTS WHO DO NOT PROVIDE CITIZENSHIP AND IDENTITY DOCUMENTATION.**

**01. Applicants.** ~~Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation.~~ Medicaid applicants have ninety (90) days to provide proof of U.S. citizenship and identity. Medicaid benefits will be approved pending verification of U.S. citizenship and identity if the participant meets all other eligibility requirements. Medicaid will be denied if the applicant refuses to obtain documentation. (3-30-07)( )

**02. Participants.** Any Medicaid participant, who does not provide proof of citizenship and identity documentation at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant: (3-30-07)

a. Does not meet other eligibility criteria required in this chapter of rules; ~~or~~ (3-30-07)( )

b. Refuses to obtain the documentation; ~~or~~ (3-30-07)( )

c. Fails to provide the documentation within ninety (90) days of a request for the documentation. ( )

**225. INDIVIDUALS CONSIDERED AS MEETING THE U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.**



The individuals listed in Subsections 225.01 through 225.05 of this rule meet the U.S. citizenship and identity requirements and are not required to provide documentation of citizenship and identity. (4-2-08)

- 01. Supplemental Security Income (SSI) Recipients.** (4-2-08)
- 02. Social Security Disability Income (SSDI) Recipients.** (4-2-08)
- 03. Individuals Determined by SSA to be Entitled to Receive Medicare.** (4-2-08)
- 04. Adoptive or Foster Care Children Receiving Assistance Under Title IV-B or Title IV-E of the Social Security Act.** (4-2-08)
- 05. Individuals Deemed Eligible for Medicaid as a Waived Newborn Under Section 530 of these Rules.** (3-29-10)
- 06. Individuals Whose Name, Social Security Number, and Declaration of U.S. Citizenship Have Been Confirmed to Match the Records of the SSA.** ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. SPONSOR DEEMING.**

Income and resources of a legal non-citizen's sponsor and the sponsor's spouse are counted in determining eligibility. *Sponsor deeming is not required for the following non-citizens:* (5-8-09)( )

- a. Afghan special immigrants as described in Section 220 of these rules; or* (5-8-09)
- b. Iraqi special immigrants as described in Section 220 of these rules.* (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**525. CONTINUOUS HEALTH CARE ASSISTANCE ELIGIBILITY FOR CHILDREN UNDER AGE NINETEEN.**

Children under age nineteen (19), who are found eligible in an initial determination or a renewal, remain eligible for a period of twelve (12) months. The twelve (12) month continuous eligibility period does not apply if, for any reason, eligibility was determined incorrectly. (3-30-07)

- 01. Reasons Continuous Eligibility Ends.** Continuous eligibility for children stops for one (1) of the following reasons: (3-30-07)
  - a.** The child is no longer an Idaho resident; or (3-30-07)

- b. The child dies; or (3-30-07)
- c. The participant requests closure; or (3-30-07)
- d. The child turns nineteen (19) years of age as defined in Subsection 010.05 of these rules. (3-30-07)

**02. Children Not Eligible for Continuous Eligibility.** Children are not eligible for continuous eligibility for one (1) of the following reasons: (3-30-07)

- a. A child is approved for emergency medical services; ~~or~~ (5-8-09)( )
- b. A child is approved for pregnancy-related services; ~~.~~ (5-8-09)( )
- ~~c. A child is an Afghan special immigrant and is approved for eight (8) months; or (3-29-10)~~
- ~~d. A child is an Iraqi special immigrant and is approved for eight (8) months. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**560. CHOOSING CHILDREN'S ACCESS CARD.**

Participants may choose Children's Access Card for a child when their countable family income ~~exceeds one hundred thirty three percent (133%) and is less than or equal to one hundred eighty-five percent (185)% of the Federal Poverty Guideline for his family size~~ meets the standards of Subsection 560.01 or 560.02 of this rule. (3-30-07)( )

**01. Children Under the Age of Six.** Family income exceeds one-hundred thirty-three percent (133%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty Guideline for his family size. ( )

**02. Children Six Years of Age or Older.** Family income exceeds one-hundred percent (100%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty guideline for his family size. ( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1002**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

**The asset test is being reinstated with an increase in the amount allowed for all the Food Stamp households. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, pages 251 through 253.](#)**

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

**The Department anticipates a fiscal impact to state general funds due to this rulemaking. The impact will be for operating costs to cover the required automation changes to the Idaho Benefits Information System (IBES), the Department's automated system which is funded with existing IBES funding. The actual Food Stamp benefits are 100% federally-funded and any change in the amount distributed does not impact state general funds.**

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

DATED this 5th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Department temporarily suspended the asset test for the Food Stamp Program (see the July 7, 2010, Idaho Administrative Bulletin, Docket 16-0305-1001) due to the lack of employment and the economy not recovering in Idaho. The temporary rule currently in place will expire and the text will revert back to the previously codified text unless the Department reinstates an asset test to replace these rules. The proposed rules in this Docket 16-0305-1002 will become effective on adjournment of the 2011 Legislative Session. This docket also reflects changes that are being made to the previously codified rules that were in effect prior to the adoption of the temporary rules.

The asset test will be reinstated with an increase in the amount allowed for all Food Stamp households. In order to qualify for the program, a household's assets, as defined by Food Stamp rules and federal regulations, cannot exceed \$5,000.

**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 anticipates a fiscal impact to state general funds due to this rulemaking. The impact will be for operating costs to cover the required automation changes to the Idaho Benefits Information System (IBES), the Department's automated system which is funded with existing IBES funding. The actual Food Stamp benefits are 100% federally-funded and any change in the amount distributed does not impact 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 meet legislative guidance.

**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 Rosie Andueza at (208) 334-5553.

DATED this 26th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1002**

**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)( )

**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)( )

**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)( )

**179. HOUSEHOLDS NOT CATEGORICALLY ELIGIBLE.**

The households listed below ~~are~~ not categorically eligible for Food Stamps. (6-1-94)( )

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

**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. 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)( )

**181. ~~MIXED HOUSEHOLDS~~ (RESERVED).**

~~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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. DETERMINING RESOURCES.**

~~Determine the countable resources available to the household by projecting resources on a month by month basis.~~ The resources of all household members are counted unless the resource is excluded. (6-1-94)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**303. COUNTING RESOURCES ~~FOR APPLICANTS.~~**

At the time of application or recertification, a household must report all countable resources it has ~~or expects to receive~~. Resources are identified and evaluated, as of the Food Stamp interview date, to determine if they are counted or excluded. (4-11-06)( )

**304. ~~COUNTING RESOURCES FOR RECIPIENTS~~ (RESERVED).**

~~Determine resources for recipients throughout the certification period as described in Section 601~~

of these rules.

(4-11-06)

~~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)

### 305. RESOURCE LIMIT.

The Food Stamp resource limit ~~for households with one (1) member who is age sixty (60) or over, or disabled,~~ is ~~three~~ **five** thousand dollars (\$~~3~~**5**,000). ~~The resource limit is three thousand dollars (\$3,000), even if the person age sixty (60) or over is the only person in the household. The resource limit for other households is two thousand dollars (\$2,000). To be considered as disabled, a person must meet one (1) of the criteria listed in Subsections 216.02 through 216.10 of these rules. Beginning October 1, 2008, the resource limit will be adjusted for inflation using the Consumer Price Index, rounded down to the nearest two hundred and fifty dollars (\$250). Each adjustment is based on the unrounded amount for the prior twelve (12) month period.~~

(5-8-09)(    )

### ~~306. CHANGE IN RESOURCE LIMIT.~~

~~The Food Stamp resource limit changes from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) the month a household member turns age sixty (60) or when the household member is disabled and meets one (1) of the criteria listed in Subsections 216.02 through 216.10 of these rules. The resource limits will be adjusted for inflation using the Consumer Price Index beginning October 1, 2008.~~

(5-8-09)

### ~~307. RESOURCES AND CHANGE IN HOUSEHOLD MEMBERS.~~

~~A change in household members can change the resource limit. If a household gains one member age sixty (60) or older, or who is disabled, the resource limit changes the month the Department adds the member to the Food Stamp household. If a household loses all members age sixty (60) or older, or who is disabled, the resource limit changes the month the Department removes the member from the Food Stamp household.~~

(3-20-04)

### ~~306. -- 307. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

### ~~380. RESOURCES PREVIOUSLY PRORATED AS INCOME EXCLUDED (RESERVED).~~

~~Resources previously prorated as income are excluded as resources. Prorated income may be loans to persons attending school or self-employed persons, paid in amounts to cover several months. After the proration period, the total amount of combined funds is a countable resource. If this money is combined with countable funds, such as a bank account, the prorated amount is excluded for the proration period.~~

(7-1-97)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1003**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-203, Idaho Code, Public Law 111-118 Section 8120, and 7 CFR 273.11(c)(1).

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

**These rule changes were made to align the food stamp program rules with federal regulations and other benefit programs to improve accuracy and processing when determining eligibility. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 254 through 263.](#)**

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

There is no anticipated fiscal impact to the state general fund due to this rulemaking. The food stamp program is 100% federally-funded.

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

DATED this 5th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail



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

**EFFECTIVE DATE:** The effective dates of the temporary rules are: **December 19, 2009; January 1, 2010; July 1, 2010; and October 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 56-203, Idaho Code, Public Law 111-118 Section 8120, and 7 CFR 273.11(c)(1).

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

**These rule changes are being made to align the food stamp program rules with federal regulations and other benefit programs. These changes will improve the Department's accuracy and processes when determining participant eligibility for food stamp benefits. The changes include clarification of income that is excluded, special immigrants with refugee status, process for returned mail and adjustment of benefits when a participant's death becomes known to the Department.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule changes is appropriate because they confer benefits.

**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 rulemaking. The food stamp program is 100% federally-funded.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes are being done to confer benefits and align with

federal regulations.

**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 Rosie Andueza at (208) 334-5553.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1003**

**204. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible for Food Stamps, an individual must meet the requirements specified in 7 CFR 273.4, "Citizenship and alien status." In addition, special immigrants from Iraq and Afghanistan have ~~limited eligibility per~~ refugee status under Public Laws ~~110-161, 110-181, and 111-118,~~ Subsection ~~602(b)(8)~~ 8120. ~~(3-29-10)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**219. CIRCUMSTANCES UNDER WHICH FOOD STAMP PARTICIPATION IS PROHIBITED.**

**01. Prohibition from Receiving Food Stamp Benefits.** An individual is prohibited from receiving Food Stamp benefits ~~in the same month as~~ at the time of application if he: ~~(4-6-05)( )~~

- a. Receives tribal commodities; (4-6-05)
- b. Is incarcerated; (4-6-05)
- c. Is in an institution; (4-6-05)

d. Is in foster care and the foster parents are receiving a cash benefit for providing care and maintenance for the child; ~~or~~ ~~(4-11-06)( )~~

e. Receives Food Stamp benefits in another household; or ~~(4-6-05)~~( )

f. Is deceased. ( )

02. Prohibited Participation During the Certification Period. If the Department learns of prohibited participation during the certification period, it will act to end benefits for that individual. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**402. UNEARNED INCOME.**

Unearned income includes, but is not limited to income listed below: (6-1-94)

**01. Public Assistance (PA).** Payments from SSI, TAFI, AABD, GA, or other Public Assistance programs are unearned income. (7-1-98)

**02. Retirement Income.** Payments from annuities, pensions, and retirement are unearned income. Old age, survivors, or Social Security benefits are unearned income. (6-1-94)

**03. Strike Benefits.** Strike benefits are unearned income. (6-1-94)

**04. Veteran's Benefits.** Veteran's benefits are unearned income. (6-1-94)

**05. Disability Income.** Disability benefits are unearned income. (6-1-94)

**06. Workers' Compensation.** Workers' Compensation is unearned income. (6-1-94)

**07. Unemployment Insurance.** Unemployment Insurance is unearned income. (6-1-94)

**08. Contributions.** Contributions are unearned income. (6-1-94)

**09. Rental Property Income.** Rental property income, minus the cost of doing business, is unearned income if a household member is not managing the property at least twenty (20) hours per week. (6-1-94)

**10. Support Payments.** Support payments, including child support payments, are unearned income. (6-1-94)

**11. Alimony.** Alimony payments are unearned income. (6-1-94)

**12. Education Benefits.** Educational scholarships, grants, fellowships, deferred payment loans, and veteran's educational benefits ~~exceeding excluded amounts~~ are excluded unearned income. ~~(6-1-94)~~( )

**13. Government Sponsored Program Payments.** Payments from government sponsored programs are unearned income. (6-1-94)

**14. Dividends, Interest, and Royalties.** Dividends, interest, and royalties are unearned income. Interest income is excluded unearned income. (~~6-1-94~~)( )

**15. Contract Income.** Contract income from the sale of property is counted as unearned income. (6-1-94)

**16. Funds From Trusts.** Monies withdrawn from trusts exempt as a resource are unearned income. Dividends paid or dividends that could be paid from trusts exempt as a resource are unearned income. (7-1-97)

**17. Recurring Lump Sum Payments.** Recurring lump sum payments are unearned income. (7-1-98)

**18. Prizes.** Cash prizes, gifts and lottery winnings are unearned income. (6-1-94)

**19. Diverted Support or Alimony.** Child support or alimony payments, diverted by the provider to a third party, to pay a household expense are unearned income. (6-1-94)

**20. Agent Orange Payments.** Payments made under the Agent Orange Act of 1991 and disbursed by the U.S. Treasury are unearned income. (6-1-94)

**21. Garnishments.** Garnishments from unearned income are unearned income. (6-1-94)

**22. Tribal Gaming Income.** Tribal gaming income is unearned income. The participant can choose to count the income in the month received, or prorate the income over a twelve (12) month period. (4-5-00)

**23. Other Monetary Benefits.** Any monetary benefit, not otherwise counted or excluded, is unearned income. (6-1-94)

**403. -- 404. (RESERVED).**

**405. EXCLUDED INCOME.**

Income excluded when computing Food Stamp eligibility is listed below: (6-1-94)

**01. Money Withheld.** Money withheld voluntarily or involuntarily, from an assistance payment, earned income, or other income source, to repay an overpayment from that income source, is excluded. If an intentional noncompliance penalty results in a decrease of benefits under a means tested program such as SSI or GA, count that portion of the benefit decrease attributed to the repayment as income. (7-1-98)

**02. Child Support Payments.** Child support payments received by TAFI recipients which must be given to CSS are excluded as income. (7-1-98)

**03. Earnings of Child Under Age Eighteen Attending School.** Earned income of a household member under age eighteen (18) is excluded. The member must be under parental control of another household member and attending elementary or secondary school. For the purposes of this provision, an elementary or secondary student is someone who attends elementary or secondary school or who attends GED or home-school classes that are recognized, operated, or supervised by the school district. This exclusion applies during semester and summer vacations if enrollment will resume after the break. If the earnings of the child and other household members cannot be differentiated, prorate equally among the working members and exclude the child's share. (7-1-98)

**04. Retirement Benefits Paid to Former Spouse or Third Party.** Social Security retirement benefits based on the household member's former employment, but paid directly to an ex-spouse, are excluded as the household member's income. Military retirement pay diverted by court order to a household member's former spouse is excluded as the household member's income. Any retirement paid directly to a third party from a household member's income by a court order is excluded as the household member's income. (6-1-94)

**05. Infrequent or Irregular Income.** Income received occasionally is excluded as income if it does not exceed thirty dollars (\$30) total in a three (3) month period. (6-1-94)

**06. Cash Donations.** Cash donations based on need and received from one (1) or more private nonprofit charitable organizations are excluded as income. The donations must not exceed three hundred dollars (\$300) in a calendar quarter of a federal fiscal year (FFY). (6-1-94)

**07. Income in Kind.** Any gain or benefit, such as meals, garden produce, clothing, or shelter, not paid in money, is excluded as income. (6-1-94)

**08. Vendor Payments.** A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. (3-20-04)

**09. Third Party Payments.** If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. (3-20-04)

**10. Loans.** Loans are money received which is to be repaid. Loans are excluded as income. (6-1-94)

**11. Money for Third Party Care.** Money received and used for the care and maintenance of a third party who is not in the household. If a single payment is for both household members and nonhousehold members the identifiable portion of the payment for nonhousehold members is excluded. If a single payment is for both household members and nonhousehold members, exclude the lesser of: (6-1-94)

**a.** The prorated share of the nonhousehold members if the portion cannot be identified. (6-1-94)

**b.** The amount actually used for the care and maintenance of the nonhousehold members. (6-1-94)

**12. Reimbursements.** Reimbursements for past or future expenses not exceeding actual costs. Payments must not represent a gain or benefit. Payments must be used for the purpose intended and for other than normal living expenses. Excluded reimbursements are not limited to: (6-1-94)

- a.** Travel, per diem, and uniforms for job or training. (6-1-94)
- b.** Out-of-pocket expenses of volunteer workers. (6-1-94)
- c.** Medical and dependent care expenses. (6-1-94)
- d.** Pay for services provided by Title XX of the Social Security Act. (6-1-94)
- e.** Repayment of loans made by the household from their personal property limit. The repayment must not exceed the amount of the loan. (6-1-94)
- f.** Work-related and dependent care expenses paid by the JSAP program. (6-1-94)
- g.** Transitional child care payments. (6-1-94)
- h.** Child care payments under the Child Care and Dependent Block Grant Act of 1990. (6-1-94)

**13. Federal Earned Income Tax Credit (EITC).** Federal EITC payments are excluded as income. (9-1-94)

**14. Work Study.** Work Study income received while attending post-secondary school is excluded as income. (3-20-04)

**15. HUD Family Self-Sufficiency (FSS) Escrow Account.** The federal exclusion for these funds are only excluded while the funds are in the escrow account or being used for a HUD approved purpose. See Section 363 of these rules for further clarification. (4-11-06)

**16. Temporary Census Earnings.** Wages earned for temporary employment related to U. S. Census activities are excluded as income during the regularly scheduled ten (10) year U. S. Census. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**415. EDUCATIONAL INCOME.**

Educational income includes deferred repayment educational loans, grants, scholarships, fellowships, and veterans' educational benefits. The school attended must be a recognized institution of post secondary education, a school for the handicapped, a vocational education

program, or a program providing completion of a secondary school diploma, or equivalent. ~~Title IV and BIA e~~ Educational income is excluded. ~~Expenses may be deducted from educational income not excluded. Proof of expenses must be provided. Educational income is computed using steps in Subsections 415.01 through 415.06.~~ (6-1-94)(    )

~~01. Step 1. Determine available income received for education. Exclude Title IV and BIA educational income.~~ (6-1-94)

~~02. Step 2. Deduct the amount for origination fees and insurance premiums from any educational loans.~~ (6-1-94)

~~03. Step 3. Deduct the largest amounts used for or earmarked as an allowance. The allowance is determined by the school, institution, or program. Do not deduct an allowance for living expenses. Deductible allowances are:~~ (6-1-94)

~~a. Tuition allowance.~~ (6-1-94)

~~b. Mandatory fees allowance. This includes rental or purchase of equipment, materials, and supplies related to the course of study.~~ (6-1-94)

~~c. Books, supplies, and transportation allowance.~~ (6-1-94)

~~04. Step 4. Deduct personal expenses incidental to attending the school, institution, or program. The expenses are determined by the school. Do not deduct living expenses.~~ (6-1-94)

~~05. Step 5. Deduct a child care allowance as determined by the school, institution, or program.~~ (6-1-94)

~~06. Step 6. The remaining income is counted in the Food Stamp budget by prorating it over the period of intended use.~~ (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**509. TYPES OF INCOME TO BE AVERAGED.**

Types of income to be averaged are listed below. Income for a destitute migrant or seasonal farm worker household is not averaged. (3-30-07)

**01. Self-Employment Income.** Average self-employment income. (6-1-94)

**02. Contract Income.** Average contract income over the period of the contract, if not received on an hourly or piecework basis. Households with averaged contract income include school employees, share croppers and farmers. These households do not include migrants or seasonal farm workers. (6-1-94)

~~03. Scholarships or Education Loans. Average scholarship, deferred educational~~

~~loan, or other educational grant income, after exclusions, over the period of intended use. Scholarships or education loans may cover part of a month. A partial month is counted as a whole month to determine the period of intended use.~~ (6-1-94)

~~a. If education benefits are received in the middle of the coverage period average them over the entire period, after deducting allowable expenses. Count the average monthly amount for only the remaining months in the period covered. No overissuance exists for the previous months.~~ (6-1-94)

~~b. If education costs are incurred and verified after the first month of the school term, average the expenses over the entire period of intended use. Deduct only the average monthly amount for the remaining months in the period of intended use.~~ (6-1-94)

**043. Income Received Less Often Than Monthly.** When receipt of income is less often than monthly, the anticipated income can be averaged over the period intended to cover to determine the average monthly income. (6-1-94)

**054. Child Support.** Child support income can be averaged to make a valid projection for ongoing income. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**531. COMPUTING GROSS INCOME.**

Compute gross Food Stamp income by performing the steps in Subsections 531.01 through 531.06 of this rule. (6-1-94)

**01. Step 1.** Project wages and salaries for the month for each household member. Do not count excluded income. (6-1-94)

**a.** Add wages and salaries for the household. (6-1-94)

**b.** Add net self-employment income. (6-1-94)

**02. Step 2.** Subtract any loss from a farmer's self-employment income. (6-1-94)

**03. Step 3.** Project unearned income, ~~including educational income,~~ for the month for each household member. Do not count excluded income. Add unearned income for the household. (6-1-94)(    )

**04. Step 4.** Add unearned income to earned income. (6-1-94)

**05. Step 5.** Subtract any remaining loss from a farmer's self-employment income. (6-1-94)

**06. Step 6.** The income remaining is gross income for Food Stamp eligibility. (6-1-94)



**(BREAK IN CONTINUITY OF SECTIONS)**

**537. DEPENDENT CARE RESTRICTIONS.**

Dependent care restrictions are listed below: (6-1-94)

**01. Care by Household Member.** Dependent care cannot be deducted if the care is provided by another household member. (6-1-94)

**02. In-Kind Payment.** Dependent care cannot be deducted if the payment is in-kind, such as food or exchanges for shelter. (6-1-94)

**03. Vendor Payment.** Dependent care cannot be deducted if paid by vendor payment. (6-1-94)

~~**04. Education Exclusion.** Dependent care cannot be deducted if income for dependent care is excluded from educational income. (6-1-94)~~

**054. Spouse Can Give Care.** Dependent care cannot be deducted if the spouse in the home is physically capable of the dependent care and is not working, seeking work, or registered for work. (6-1-94)

**065. Paid or Reimbursed Dependent Care.** Dependent care cannot be deducted if paid or reimbursed under a federal child care program. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**613. CHANGES ON WHICH THE DEPARTMENT MUST ACT.**

**01. General Changes on Which Department Must Act.** Regardless of whether the Food Stamp Benefit will increase or decrease, the Department must act as described in Sections 617 and 618 of these rules when: (4-11-06)

**a.** The household requests closure; (4-6-05)

**b.** The TAFI or AABD grant amount changes; (4-6-05)

**c.** An individual is sanctioned or disqualified; (4-6-05)

**d.** The change would cause prohibited participation, see Section 219 of these rules; (4-11-06)

e. Information is received from a source the Department has defined as verified upon receipt in Section 012 of these rules; (4-11-06)

f. The change is required to be reported and the change is expected to continue into the next month; (4-6-05)

g. The Food Stamp benefit will increase and the change is not a change in expenses; (4-11-06)

h. The household reports that all members of the household moved out of the state of Idaho; ~~or~~ (3-29-10)( )

i. The U.S. Post Office returns mail to the Department because the household moved and left no forwarding address as provided in Section 735 of these rules. ( )

**02. Changes Resulting in an Increase in the Food Stamp Benefit.** The Department must also act on changes that have been reported that would increase the household's Food Stamp amount as described in Section 617 of these rules. (4-11-06)

**03. Documentation.** Changes must be documented in the case record, even if there is no change in the Food Stamp amount. (6-1-94)

**04. Change Report Form.** A new Change Report Form (HW 0594 or HW 0586) must be given or sent to the household when a change is reported. (6-1-94)

**05. Receipt of Report Notice.** The Department must notify the household when the report is received. A Notice of Decision meets this requirement, when notifying the household of a benefit determination. (6-1-94)

**06. Proof.** Give the household a written request for proof. The household must be told failure to provide the proof will result in decreased or stopped benefits. The Department must document how the request for proof was made. (3-15-02)

**07. Unclear Information.** If the Department is unable to readily determine the effect of a change on the household's benefit amount, the Department will issue a written request advising the household of proof it must provide or actions it must take, to clarify its circumstances. The household has ten (10) days in which to respond to the Department's request, either by telephone or correspondence. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**633. NOTICE OF CHANGES NOT REQUIRED.**

Notice to individual Food Stamp households is not required when the conditions listed in Subsection 633.01 below are met. Mass notice must be given in some situations, as listed in Subsection 633.02 below: (4-5-00)

**01. Waiver by the Household.** A household member or authorized representative provides a written statement requesting closure. The person gives information causing reduction or an end to benefits and states, in writing, they know adverse action will be taken. The person acknowledges in writing continuation of benefits is waived, if a fair hearing is requested. (4-5-00)

- 02. Mass Change.** Mass changes include: (6-1-94)
- a.** Changes in the income limit tables. (6-1-94)
  - b.** Changes in the issuance tables. (6-1-94)
  - c.** Changes in Social Security benefits. (6-1-94)
  - d.** Changes in SSI payments. (6-1-94)
  - e.** Changes in TAFI or AABD grants. (7-1-98)
  - f.** Changes caused by a reduction, suspension, or cancellation of Food Stamps ordered by the Secretary of USDA. (6-1-94)
  - g.** When it performs mass changes, the Department notifies Food Stamp households of the mass change by one of the following methods: (6-1-94)
    - i.** Media notices. (6-1-94)
    - ii.** Posters in the Food Stamp offices and issuance locations. (6-1-94)
    - iii.** A general notice mailed to households. (6-1-94)

**03. Mass Changes in TAFI or AABD.** When a mass change to TAFI or AABD causes a Food Stamp change, use the following criteria: (7-1-98)

- a.** If the Department has thirty (30) days advance notice of the TAFI or AABD mass change, Food Stamps must be adjusted the same month as the change. (7-1-98)
- b.** If the Department does not have advance notice, Food Stamp benefits must be changed no later than the month after the TAFI or AABD mass change. (7-1-98)
- c.** Ten (10) day advance notice to Food Stamp households is not required. Adequate notice must be sent to Food Stamp households. (6-1-94)
- d.** If a household requests a fair hearing because of an issue other than mass change, continue Food Stamps. (6-1-94)

**04. Notice of Death.** Notice is not required when the Department learns of the death of all household members. (6-1-94)

**05. Move From Idaho or Cannot be Located.** Notice of closure is not required when the household moves from Idaho, or when the U.S. Post Office returns mail to the Department because the household moved and left no forwarding address. (4-11-06)( )

**06. Completion of Restored Benefits.** Notice is not required when an increased allotment, due to restored benefits, ends. The household must have been notified in writing when the increase would end. (6-1-94)

**07. Joint Public Assistance and Food Stamp Applications.** Notice is not required if the household jointly applies for TAFI or AABD and Food Stamps and gets Food Stamps pending TAFI or AABD approval. The household must be notified at certification that Food Stamps will be reduced upon TAFI or AABD approval. (7-1-98)

**08. Converting From Repayment to Benefit Reduction.** Notice is not required if a household with an IHE or IPV claim fails to repay under the repayment schedule. An allotment reduction is enforced. (6-1-94)

**09. Households Receiving Expedited Service.** Notice is not required if all the following conditions are met: (4-11-06)

- a. The applicant received expedited services. (4-11-06)
- b. Proof was postponed. (6-1-94)
- c. A regular certification period was assigned. (6-1-94)
- d. Written notice, stating future Food Stamps depend on postponed proof, was given at approval. (6-1-94)

**10. Residents of a Drug or Alcoholic Treatment Center or a Group Living Arrangement Center.** Notice is not required when the Department ends Food Stamps to residents of a drug or alcoholic treatment center or group living arrangement center if: (6-1-94)

- a. The Department revokes the center's certification. (6-1-94)
- b. FCS disqualifies the center as a retailer. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**735. FOOD STAMP HOUSEHOLDS THAT MOVE.**

**01. Household Moves and New Address is Known.** When a Food Stamp household moves: ( )

- a. ~~Within Idaho, the sending and receiving field offices must transfer the case~~

~~record and~~ the Department will change the household's address. ( )

**b.** ~~When all members of a Food Stamp household move o~~Outside of Idaho, the Department will close the case effective at the end of the month in which the household moves. Notice is not required. ~~(4-11-06)~~( )

**02. Household Moves and New Address is Unknown.** When the U.S. Post Office returns mail to the Department because the household moved and left no forwarding address, the case is closed at the end of the month. Notice is not required. ( )

**a.** If the household contacts the Department and provides a new Idaho address in the first calendar month following closure, the case is reopened without a new application as long as the certification period has not expired. The Food Stamps case is effective as of the first day of the month the Department is contacted. ( )

**b.** New proof of residency is not required, unless questionable. ( )

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND, AND DISABLED (AABD)**

**DOCKET NO. 16-0305-0904**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is January 1, 2010. This pending rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 56-202, Idaho Code, and 42 USC 1396d(p)(1)(C) and 42 USC 1396d(s).

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

**The Department is amending the text of the proposed rules and the temporary rule based on federal guidance from the Centers for Medicare and Medicaid Services (CMS). CMS has provided this guidance to implement the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. The amendments to these rules align the Medicare Saving Program for Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary SLMB, and the Qualifying Individual (QI) for Medicare Part B with the Full-Benefit Low-Income Subsidy (LIS) Program resource limits and updates references to the Social Security Act.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions that have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [December 2, 2009, Idaho Administrative Bulletin, Vol. 09-12, pages 85 through 88.](#)**

**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 fiscal impact for this rulemaking is based on the Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary (SLMB), and the Qualifying**

**Individual (QI) for Medicare Part B Premiums.** For SFY 2010, the anticipated state general funds impact is \$199,700 and federal matching funds of \$777,700. For SFY 2011, the anticipated state general funds impact is \$1,834,000 and federal matching funds of \$5,496,300. These amounts are reflected in the Medicaid Trustee and Benefit expenditure projections for the state fiscal years of 2010 and 2011.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Susie Cummins at (208) 732-1419.

DATED this 10th day of March, 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

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

**EFFECTIVE DATE:** The effective date of these temporary rules is **January 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 Section 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than December 16, 2009.

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 amending these rules to comply with the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. These rules align the Medicare Savings Program for Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary (SLMB), and the Qualifying Individual (QI) for Medicare Part B with the Full-Benefit Low-Income Subsidy (LIS) Program resource limits.**

The Social Security Administration provides the Department a list of LIS applicants. These rules provide that the Medicare Savings Program application date is the day they apply for LIS.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of these rules is appropriate to meet requirements in federal law.

**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 fiscal impact for this rulemaking is based on the Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary (SLMB), and the Qualifying Individual (QI) for Medicare Part B Premiums. For SFY 2010, the anticipated state general funds impact is \$199,700 and federal matching funds of \$777,700. For SFY 2011, the anticipated state general funds impact is \$1,834,000 and federal matching funds of \$5,496,300. These amounts are reflected in the Medicaid Trustee and Benefit expenditure projections for the state fiscal years of 2010 and 2011.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these are being amended to align with federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Susie Cummins at (208) 732-1419.

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 December 23, 2009.

DATED this 4th day of November, 2009.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0904***

**050. APPLICATION FOR ASSISTANCE.**

**01. Application Submitted by Participant.** The participant must submit an application form to the Department. An adult participant, a legal guardian or a representative,



must sign the application form.

~~(7-1-99)~~( )

**02. Application Submitted Through Social Security Administration (SSA) Low-Income Subsidy Data Transmission.** For low-income subsidy applicants identified on the SSA data transmission, the protected Medicare Savings Program application date is the day they applied for the low-income subsidy (LIS). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**810. QUALIFIED MEDICARE BENEFICIARY (QMB).**

A person meeting all requirements in Subsections 810.01 through 810.07 is eligible for QMB. QMB Medicaid pays Medicare premiums, coinsurance, and deductibles. (3-15-02)

**01. Medicare Part A.** The participant must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

**02. Nonfinancial Requirements.** The participant must meet the Medicaid residence, citizenship, support cooperation, and SSN requirements. (7-1-99)

**03. Income.** Monthly income must not exceed one hundred percent (100%) of the ~~official poverty line defined by the Federal Office of Management and Budget (OMB)~~ **Federal Poverty Guidelines (FPG)**. The single person income limit is the poverty line for a family of one (1) person. The couple income limit is the poverty line for a family of two (2) persons. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual ~~Federal poverty line~~ **FPG** revision is published. AABD cash is not counted as income. The income exclusions and disregards used for AABD are used for QMB. ~~(3-20-04)~~( )

**04. Dependent Income.** Income of the dependent child, parent, or sibling is not counted. (7-1-99)

**05. QMB Dependent Family Member Disregard.** A dependent family member is a minor child, adult child meeting SSA disability criteria, parent or sibling of the participant or spouse living with the participant. The family member is or could be claimed on the Federal tax return of the participant or spouse. A participant with a dependent family member has an income disregard based on family size. The spouse is included in family size, whether or not the spouse is also participant. The disregard is based on the official poverty line income as defined by the OMB. The disregard is the difference between the poverty line for one (1) person, or two (2) persons if the participant has a spouse, and the poverty line for the family size including the participant, spouse, and dependent. (7-1-99)

**06. Resource Limit.** The resource limit ~~for a single participant is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000).~~ **is equal to the amount defined under 42 U.S.C. 1396d(p)(1)(C).** The resource exclusions used for AABD are used for QMB. ~~(3-20-04)~~( )

**07. Effective Dates.** The effective date of QMB coverage is no earlier than the first day of the month after the approval month. A QMB participant is not entitled to backdated Medicaid. (7-1-99)

**811. SPECIFIED LOW INCOME MEDICARE BENEFICIARY (SLMB).**

A person meeting all requirements in Subsections 811.01 through 811.076 is eligible for SLMB. Medicaid pays the Medicare Part B premiums for a SLMB. The income and resource exclusions and disregards used for AABD are used for SLMB. (3-20-04)( )

**01. Other Medicaid.** The SLMB may be eligible for other Medicaid. ~~The SLMB-H cannot be eligible for any other type of Medicaid.~~ (3-20-04)( )

**02. Medicare Part A.** The SLMB must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

**03. Nonfinancial Requirements.** The SLMB must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. (7-1-99)

**04. Income.** The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual ~~Federal poverty line~~ **FPG** revision is published. ~~The monthly income limit depends on the SLMB group.~~ The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit ~~for SLMB Group I~~ is up to one hundred twenty percent (120%) of the ~~Federal poverty line~~ **FPG**. ~~Monthly income for SLMB Group II is at least one hundred and twenty percent (120%) and not more than one hundred thirty five percent (135%) of the Federal poverty line.~~ (3-20-04)( )

**05. Resource Limit.** The resource limit ~~for a single person is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000).~~ is equal to the amount defined under 42 USC 1396d(p)(1)(C). The resource exclusions used for AABD are used for SLMB. (7-1-99)( )

~~**06. Coverage Limits.** Medicaid pays the Medicare Part B premium for SLMB Group I. There is no annual limit on participants served. Medicaid pays the Medicare Part B premium for SLMB Group II. There is an annual limit on participants served, based on availability of Federal funds. New applications are denied when the annual limit is reached.~~ (3-20-04)

**076. Effective Dates.** SLMB coverage begins on the first day of the application month. SLMB coverage may be backdated up to three (3) calendar months before the application month. (7-1-99)

~~**08. Status of SLMB Group II.** SLMB Group II is extended to at least January 21, 2003, pending action by the U. S. Congress.~~ (3-20-04)

**812. Qualified Individual (QI).**

A person meeting all requirements in Subsections 812.01 through 812.07 is eligible for QI. Medicaid pays the Medicare Part B premiums for a QI. The income and resource exclusions and disregards used for AABD are used for QI. ( )

- 01. Other Medicaid.** The QI cannot be eligible for any other type of Medicaid. ( )
- 02. Medicare Part A.** The QI must be entitled to hospital insurance under Part A of Medicare at the time of his application. ( )
- 03. Nonfinancial Requirements.** The QI must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. ( )
- 04. Income.** The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual FPG revision is published. The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit is up to one hundred thirty-five percent (135%) of the FPG. ( )
- 05. Resource Limit.** The resource limit is equal to the amount defined under 42 USC 1396d(p)(1)(C). The resource exclusions used for AABD are used for SLMB. ( )
- 06. Coverage Limits.** There is an annual limit on participants served, based on availability of federal funds. New applications are denied when the annual limit is reached. ( )
- 07. Effective Dates.** QI coverage begins on the first day of the application month. QI coverage may be backdated up to three (3) calendar months before the application month. ( )

**8123. QUALIFIED DISABLED AND WORKING INDIVIDUAL (QDWI).**

A person meeting all requirements in Subsections 812.01 through 812.05 of these rules is eligible for QDWI. The person must not be eligible for any other type of Medicaid. A QDWI is eligible only for Medicaid payment of his Medicare Part A premium. (3-15-02)

- 01. Age and Disability.** The participant must be a disabled worker under age sixty-five (65). (7-1-99)
- 02. Nonfinancial Requirements.** The participant must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation and SSN. (7-1-99)
- 03. Section 1818A Medicare.** SSA determined the participant meets the conditions of Section 1818A of the Social Security Act. (7-1-99)
- 04. Income.** Monthly income must not exceed two hundred percent (200%) of the one (1) person official poverty line defined by the OMB. (7-1-99)
- 05. Resources Limit.** The resource limit is ~~four thousand dollars (\$4,000)~~ equal to the amount defined under 42 USC 1396d(s). The resource exclusions used for AABD are used for QDWI. (7-1-99)( )

**8134. SPONSORED LEGAL NON-CITIZEN.**

All income and resources of a legal non-citizen's sponsor are deemed for Medicaid eligibility if the sponsor has signed an I-864 affidavit of support. (7-1-99)

**8145. CHILD SUBJECT TO DEEMING.**

Income and resources of a child's stepparent are not deemed to the child in determining his Medicaid eligibility. (7-1-99)

**8156. FUGITIVE FELON OR PROBATION OR PAROLE VIOLATOR.**

A person denied SSI or AABD cash because of the prohibition against payment to fugitive felons and probation and parole violators is not disqualified from Medicaid. (7-1-99)

**8167. -- 830. (RESERVED).**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,**  
**BLIND AND DISABLED (AABD)**

**DOCKET NO. 16-0305-1001**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2010. This pending rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

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

**Changes are being made to the proposed rule and amending the temporary rule to clarify and add definitions for “needy” and “Title XVI” of the Social Security Act. Other changes have been made to clarify that a participant living in a Residential Care or Assisted Living Facility (RALF) or a Certified Family Home (CFH) is not eligible for AABD cash payments.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [June 2, 2010, Idaho Administrative Bulletin, Vol. 10-6, pages 39 through 44.](#)**

**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:

**Total cost savings to the state general fund for SFY 2011 for changes made to the AABD cash payment program is anticipated to be \$1,370,608 over a 12-month period.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Callie King at (208) 334-0663.

DATED this 27th day of September, 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  
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***THIS NOTICE PUBLISHED WITH THE 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 56-202 and 56-203, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 16, 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 2010 Legislature passed House Bill 723, setting the Department's appropriations for State Fiscal Year 2011. The Department needs to reduce general fund expenditures and plans to do so by making the following rule changes:**

- 1. Cap the amount of AABD cash payments for all living arrangements, which include: Room and Board, Semi-Independent Group Residential Facility (SIGRF), Assisted Living or Residential Care Facility (RALF), Certified Family Home (CFH), and Essential Persons who provide services in the participant's own home;**
- 2. Change rules to limit AABD cash only to participants who receive SSI payments; and**

- 3. Align benefits for the DD Waiver participants with the A&D Waiver participants living in CFHs and RALFs.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary for compliance with deadlines in amendments to governing law.

**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:

**Total cost savings to the state general fund for SFY 2011 for changes made to AABD cash payment program is anticipated to be \$1,101,900 over a 12-month period.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to meet the appropriations set for SFY 2011 by the 2010 Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Susie Cummins at (208) 732-1419.

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 June 23, 2010.

DATED this 4th day of May, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-1001***

**005. DEFINITIONS.**

These definitions apply to IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)": (7-1-99)

**01. AABD Cash.** An EBT payment to a participant, a participant's guardian, or a holder of a limited power of attorney for EBT payments. (5-3-03)

**02. Applicant.** A person applying for public assistance from the Department, and whose application is not fully processed. (7-1-99)

**03. Annuity.** A right to receive periodic payments, either for life, a term of years, or

other interval of time, whether or not the initial payment or investment has been annuitized. It includes contracts for single payments where the single payment represents an initial payment or investment together with increases or deductions for interest or fees rather than an actuarially-based payment from an insurance pool. (3-30-07)

**04. Asset.** Includes all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to, but does not receive because of action by: (3-30-07)

**a.** The individual or such individual's spouse; (3-30-07)

**b.** A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or (3-30-07)

**c.** A person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse. (3-30-07)

**05. Asset Transfer for Sole Benefit.** An asset transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of transfer or at any time in the future. (5-3-03)

**06. Child.** A child is under age eighteen (18), or under twenty-one (21) and attending school, college, university, or vocational or technical training designed to prepare him for gainful employment. A child is not married. A child is not the head of a household. (7-1-99)

**07. Department.** The Department of Health and Welfare. (7-1-99)

**08. Direct Deposit.** The electronic deposit of a participant's AABD cash to the participant's personal account with a financial institution. (7-1-99)

**09. Electronic Benefits Transfer (EBT).** A method of issuing AABD cash to a participant, a participant's guardian or a holder of a limited power of attorney for EBT payments for a participant. EBT rules are in IDAPA 16.03.20, "Rules Governing Electronic Payments of Public Assistance, Food Stamps and Child Support." (7-1-99)

**10. Essential Person.** A person of the participant's choice whose presence in the household is essential to the participant's well-being. The essential person provides the services a participant needs to live at home. (5-3-03)

**11. Fair Market Value.** The fair market value of an asset is the price for which the asset can be reasonably expected to sell on the open market, in the geographic area involved. (5-3-03)

**12. Long-Term Care.** Long-term care services are services provided to an institutionalized individual as defined in 42 U.S.C. 1396p(c)(1)(C). (3-30-07)



**13. Medicaid.** The Federally-funded program for medical care (Title XIX, Social Security Act). (5-3-03)

**14. Medical Assistance Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-30-07)

**15. Medicaid for Families With Children Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, “Eligibility for Health Care Assistance for Families and Children.” (7-1-99)

**16. Needy.** *A person is considered needy for AABD cash payments if the person meets the nonfinancial requirements of Title XVI of the Social Security Act and the criteria in Section 514 of these rules.* ( )

**167. Participant.** An individual applying for or receiving assistance. (7-1-99)

**178. Partnership Policy.** A partnership policy is a qualified long-term care insurance policy as defined in Section 7702B(b) of the Internal Revenue Code of 1986, which meets the requirements of the long-term care insurance model regulation and long-term care insurance model act promulgated by the National Association of Insurance Commissioners (NAIC), as incorporated in 42 USC 1396p(b)(5)(A). (4-2-08)

**189. Pension Funds.** Pension funds are retirement funds held in individual retirement accounts (IRAs), as described by the Internal Revenue Code, or in work-related pension plans, including plans for self-employed individuals sometimes referred to as Keogh plans. (4-2-08)

**1920. Sole Beneficiary.** The only beneficiary of a trust, including a beneficiary during the grantor’s life, a beneficiary with a future interest, and a beneficiary by the grantor’s will. (7-1-99)

**201. TAFI Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.08, “Rules Governing Temporary Assistance for Families in Idaho.” (7-1-99)

**22. Title XVI.** *Title XVI of the Social Security Act, known as “Grants to States for Aid to the Aged, Blind, or Disabled,” is a program for financial assistance to needy individuals who are sixty-five (65) years of age or over, are blind, or are eighteen (18) years of age or over and permanently and totally disabled.* ( )

**213. 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. (3-30-07)

**224. Title XXI.** Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-30-07)

~~235.~~ **Treasury Rate.** The five (5) year security note rate listed in the “Daily Treasury Yield Curve Rate” by the U.S. Treasury on January 1 of each year. The January 1 rate is used for the entire calendar year. (4-2-08)

~~246.~~ **Working Day.** A calendar day when regular office hours are observed by the state of Idaho. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**106. ~~QUALIFIED NON-CITIZEN ELIGIBILITY REQUIREMENTS FOR AABD CASH (RESERVED).~~**

~~01. Eligibility Requirements for AABD Cash Beginning March 1, 2009. Beginning with applications dated March 1, 2009, to be eligible for AABD cash assistance, a qualified non-citizen must meet the requirements in Section 105 of these rules and must meet the eligibility requirements for Supplemental Security Income (SSI) payments. (3-29-10)~~

~~02. Receiving AABD Cash Prior to March 1, 2009. A qualified non-citizen who was eligible for and received an AABD cash payment for February 2009, but does not meet the SSI eligibility requirements, will continue to receive an un-capped cash benefit as long as all other eligibility requirements are met until one (1) of the following occurs: (3-29-10)~~

~~a. A break in the qualified non-citizen's AABD cash payment occurs because he failed to complete a redetermination for benefits; or (3-29-10)~~

~~b. The qualified non-citizen has not become a naturalized citizen and two (2) years have passed from March 1, 2009, and he does not meet the eligibility requirements for SSI payments. (3-29-10)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**255. RETROACTIVE SSI AND ~~AABD~~ RSDI BENEFITS.**

Retroactive SSI and ~~AABD~~ RSDI benefits are issued after the calendar month for which they are paid. Retroactive ~~AABD~~, SSI and RSDI benefits are excluded from resources for nine (9) calendar months after the month they are received. Interest earned by excluded funds is counted as income. ~~(3-29-10)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. FINANCIAL NEED ~~AND AABD CASH AMOUNT.~~**

~~01. **Meet Eligibility for Financial Need.** To be eligible for AABD cash and Medicaid, the participant must have financial need. The participant has financial need if his allowances, as described in Sections 501 through 513 of these rules, are more than his income. *The amount of financial need is the amount that the allowances exceed income.* (3-29-10)( )~~

~~02. **Maximum Monthly AABD Cash Payment.** If the participant is eligible, his AABD cash payment is the difference between his financial need and his countable income. If the difference is not an even dollar amount, AABD cash is paid at the next higher dollar. The maximum monthly AABD cash payment, for a participant described in Subsections 501.01 and 501.02 of these rules, is fifty three (\$53) dollars. AABD cash is paid electronically as set forth in IDAPA 16.03.20, "Rules Governing Electronic Payments (EP) of Public Assistance, Food Stamps, and Child Support." (3-29-10)~~

### 501. BASIC ALLOWANCE.

Each participant receives a basic allowance unless he lives in a nursing facility. The basic allowance for each living arrangement is listed in Subsections 501.01 through 501.04<sup>3</sup> of ~~these~~ this rules. The Semi-Independent Group Residential Facility, Room and Board, Residential and Assisted Living Facility and Certified Family Home basic allowances are those in effect January 1, 2001. They do not change with the annual cost-of-living increase in the federal SSI benefit amount. (3-30-07)( )

**01. Single Participant.** Through December 31, 2000, a participant is budgeted five hundred forty-five dollars (\$545) monthly as a basic allowance when living in a situation described in Subsections 501.01.a. through 501.01.e. of these rules. Beginning January 1, 2001, the basic allowance increase for a single participant is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. (3-30-07)

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

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

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

(7-1-99)

~~04. **Personal Care Supplement.** A participant living in a Residential and Assisted Living Facility, or Certified Family Home with state plan personal care services, is budgeted five hundred and twenty dollars (\$520) monthly as a Basic Allowance, if he does not have enough income to pay his provider for his rent, utilities and food. To receive a Personal Care Supplement, the participant's income after exclusions and disregards must be less than his Basic Allowance. The amount of the supplement is the remainder when income, less exclusions and disregards, is subtracted for the basic allowance. Beginning January 1, 2003, the basic allowance increase is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.~~ (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**513. RESIDENTIAL CARE OR ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.**

A participant living in a Residential Care or Assisted Living Facility (RALF), in accordance with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," or a Certified Family Home (CFH), in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," is budgeted a basic allowance of seventy-seven dollars (\$77) monthly. Beginning January 1, 2007, this basic allowance will be adjusted annually by twenty percent (20%) of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded down to the nearest dollar. (3-30-07)

**01. Budgeted Monthly Allowance Based On Level of Care.** A participant is budgeted a monthly allowance for care based on ~~his assessed~~ the level of care received as described in Section 514~~5~~ of these rules. ~~If the participant receives a lower State Plan Personal Care Service (PCS) level of care than his assessed level, his allowance is for the lower level of care. These allowances are used to determine income limits for Medicaid if the participant does not qualify for the Home and Community Based Services Waivers. These allowances are only used for AABD cash when the participant is entitled to the DD Waiver in accordance with Section 789 of these rules.~~ If the participant does not require ~~one (1) of the~~ State Plan Personal Care Services (PCS) levels of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. (3-30-07)(    )

**02. Care Levels and Monthly Allowances.** Beginning January 1, 2006, care levels and monthly allowances are those listed in Table 513.02 of these rules. Beginning January 1, 2007, the RALF and CFH allowances for participants living in a RALF or CFH on State Plan PCS will be adjusted annually by eighty percent (80%) of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. This increase will be rounded up to the next dollar.

TABLE 513.02 - STATE PLAN PCS CARE LEVELS AND ALLOWANCES AS OF 1-1-06		
	Level of Care	Monthly Allowance
a.	Level I	Eight hundred and thirty-five dollars (\$835)
b.	Level II	Nine hundred and two dollars (\$902)
c.	Level III	Nine hundred and sixty-nine dollars (\$969)

(3-30-07)

**03. CFH Operated by Relative.** A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH State Plan PCS allowances. He may receive the allowance for a person living with a relative as described in Section 501 of these rules. A relative for this purpose is the participant's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption.

(3-30-07)

**514. AABD CASH PAYMENTS.**

Only a participant who receives an SSI payment for the month is eligible for an AABD cash payment in the same month. The AABD cash payment amount is based on the participant's living arrangement described in Subsections 514.01 through 514.04 of this rule. An AABD cash payment is the difference between a participant's financial need and his countable income. If the difference is not an even dollar amount, AABD cash is paid at the next higher dollar. AABD cash is paid electronically as provided in IDAPA 16.03.20, "Electronic Payments of Public Assistance, Food Stamps, and Child Support."

( )

**01. Single Participant Maximum Payment.** For a single participant described in Section 501.01 of these rules, the maximum monthly AABD cash payment amount is fifty-three dollars (\$53).

( )

**02. Couple or Participant Living with Essential Person Maximum Amount.** For participants described in Subsection 501.02 of these rules, the maximum monthly AABD cash payment amounts are:

( )

**a.** A couple receives twenty dollars (\$20); or

( )

**b.** A participant living with essential person receives eighteen dollars (\$18).

( )

**03. Semi-Independent Group Maximum Payment.** For a participant described in Subsection 501.03 and Section 511 of these rules, the maximum monthly AABD cash payment amount is one hundred sixty-nine dollars (\$169).

( )

**04. Room and Board Maximum Payment.** For a participant described in Section 512 of these rules, the maximum monthly AABD cash payment is one hundred ninety-eight dollars (\$198).

( )

**05. RALF and CFH.** A participant residing in a RALF or CFH is not eligible for an AABD cash payment. ( )

**5145. RESIDENTIAL AND ASSISTED LIVING FACILITY CARE AND CERTIFIED FAMILY HOME ASSESSMENT AND LEVEL OF CARE.**

The participant's need for care, level of care, plan of care, and the licensed facility's ability to provide care is assessed by the Regional Medicaid Services (RMS) when a participant is admitted. The RMS must approve the placement before Medicaid can be approved ~~or a Personal Care Supplement can be paid.~~ (5-3-03)( )

**5156. CHANGE IN LEVEL OF CARE.**

A change in the participant's level of care affects eligibility as described in Subsections 5156.01 and 5156.02 of this rule. (5-3-03)( )

**01. Increase in Level of Care.** An increase in level of care is effective the month the RMS reassesses the level of care. (5-3-03)

**02. Decrease in Level of Care.** When the RMS verifies the participant has a decrease in his level of care, and his income exceeds his new level of care, his Medicaid must be stopped after timely notice. When the RMS determines the participant no longer meets any level of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. ~~He can receive AABD cash.~~ (5-3-03)( )

**5167. -- 520. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

<del>TABLE 522—PERSONAL CARE SUPPLEMENT</del>		
<del>Step</del>	<del>Step</del>	<del>Procedure</del>
<del>01.</del>	<del>Step-1</del>	<del>Determine the participant's countable income, for the month of the move, by subtracting applicable income exclusions and disregards.</del>
<del>02.</del>	<del>Step-2</del>	<del>Subtract income used to meet patient liability in the nursing home for the month of the move.</del>
<del>03.</del>	<del>Step-3</del>	<del>Subtract the nursing home personal needs allowance from the income remaining after Step 1. Use this income to determine the amount of the Personal Care Supplement in Subsection 501.05 of these rules.</del>

(5-3-03)

522. -- 523. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

603. ~~RETROACTIVE AABD CASH~~ (RESERVED).

~~Retroactive AABD cash is paid when a participant is underpaid due to Department error.  
Retroactive AABD cash is paid when a participant gets a favorable fair hearing decision.  
Retroactive AABD cash is paid when an AABD applicant's SSI payments are delayed because of  
SSA delays.~~ (7-1-99)

604. ~~RETROACTIVE AABD CASH AND~~ PARTICIPANT DETERMINED SSI  
ELIGIBLE AFTER APPEAL.

If the SSA finds a participant is blind or disabled, based on an appeal of an SSA decision, the participant meets the disability requirements for AABD cash and related Medicaid on the effective date determined by SSA. AABD cash payments are effective no earlier than the month SSA issues the favorable decision for SSI payments. (7-1-99)( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,**  
**BLIND AND DISABLED (AABD)**

**DOCKET NO. 16-0305-1002**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code, Public Law 111-118 Section 8120, and Public Law 111-3, Section 211.

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

**These rule changes were made due to federal regulations and the removal of the ISSH Waiver from the Medicaid State Plan. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-09, pages 168 through 175.](#)**

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Callie King (208) 334-0663.

DATED this 5th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail



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

**EFFECTIVE DATE:** The effective dates of the temporary rules are: **December 19, 2009, January 1, 2010, and September 1, 2010.**

Editor's Note: The January 1, 2010, temporary effective date reflects the date on which the deletion of Section 790 became effective. This Section is being deleted from the rule in this rulemaking. Because this Section 790 is being deleted, there is no actual effective date shown in this docket. This date indicates when the formerly required waiver was no longer considered an eligibility requirement and when enforcement of the requirement was terminated.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code; also eligibility for special immigrants per Public Law 111-118, Section 8120; and Public Law 111-3, Section 211, regarding verification of citizenship or nationality for purposes of determining eligibility for Medicaid or the Children's Health Insurance Program (CHIP).

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 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:

**Due to changes in federal regulations and the expiration of the ISSH Waiver from the Medicaid State Plan, these AABD rules are amended to:**

- 1. Allow for the use of electronic data transfer from the Social Security Administration (SSA) to verify U.S. citizenship and identity as provided in Public Law 111-3, Section 211;**
- 2. Change the eligibility time period for Afghani and Iraqi special immigrants to comply with changes in Public Law 111-118, Section 8120; and**
- 3. Remove references to the Idaho State School and Hospital (ISSH) Waiver as it is no longer available as of January 1, 2010.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code:

**The Governor has found that temporary adoption of the rule changes is appropriate**

**because they confer benefits.**

**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 related to this rulemaking.

1. Cost impacts for electronic data transfer with SSA for this chapter is minimal to state general funds or AABD.
2. There are no Special Immigrants currently eligible for AABD, therefore the anticipated fiscal impact for 2011 is \$0.
3. There are no ISSH waiver participants, therefore the anticipated fiscal impact is \$0.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes are being done to confer benefits and align with federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Callie King at (208) 334-0663.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 13th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-1002***

**104. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.**

To be eligible for AABD cash and Medicaid, an individual must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Subsection 104.09 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. (3-29-10)

**01. Documents Accepted as Primary Level Proof of Both U.S. Citizenship and Identity.** The following documents are accepted as the primary level of proof of both U.S. citizenship and identity: (3-30-07)

- a. A U.S. passport; (3-30-07)
- b. A Certificate of Naturalization, DHS Forms N-550 or N-570; or (3-30-07)
- c. A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561. (3-30-07)
- d. A document issued by a federally-recognized Indian tribe evidencing membership, enrollment in, or affiliation with such tribe. (3-29-10)

**02. Documents Accepted as Secondary Level Proof of U.S. Citizenship but Not Identity.** The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 104.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)
  - i. United States fifty (50) states; (3-30-07)
  - ii. District of Columbia; (3-30-07)
  - iii. Puerto Rico, on or after January 13, 1941; (3-30-07)
  - iv. Guam, on or after April 10, 1899; (3-30-07)
  - v. U.S. Virgin Islands, on or after January 17, 1917; (3-30-07)
  - vi. America Samoa; (3-30-07)
  - vii. Swain's Island; or (3-30-07)
  - viii. Northern Mariana Islands, after November 4, 1986; (3-30-07)
- b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)
- c. A report of birth abroad of a U.S. Citizen, Form FS-240; (3-30-07)
- d. A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
- e. A Northern Mariana Identification Card, Form I-873; (3-30-07)

- f.** An American Indian Card issued by the Department of Homeland Security with the classification code “KIC,” Form I-873; (3-30-07)
- g.** A final adoption decree showing the child’s name and U.S. place of birth; (3-30-07)
- h.** Evidence of U.S. Civil Service employment before June 1, 1976; (4-2-08)
- i.** An official U.S. Military record showing a U.S. place of birth; (4-2-08)
- j.** A certification of birth abroad, FS-545; (4-2-08)
- k.** A verification with the Department of Homeland Security’s Systematic Alien Verification for Entitlements (SAVE) database; or (4-2-08)
- l.** Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000. (4-2-08)

**03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity.** The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a.** A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth; (4-2-08)
- b.** A life, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth; (4-2-08)
- c.** A religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual’s age at the time the record was made. The record must be an official record recorded with the religious organization; or (4-2-08)
- d.** An early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the names and places of the birth of the child’s parents. (4-2-08)

**04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity.** The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 104.01 through 104.03 of this rule do not exist and cannot be obtained for a person who claims U.S. citizenship. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a.** Federal or state census record that shows the individual has U.S. citizenship or a

U.S. place of birth; (3-30-07)

**b.** One (1) of the following documents that shows a U.S. place of birth and for a participant who is sixteen (16) years of age or older was created at least five (5) years before the application for Medicaid. For a child under sixteen (16) years of age, the document must have been created near the time of birth; (4-2-08)

- i. Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)
- ii. U.S. State vital Statistics official notification of birth registration; (3-30-07)
- iii. A delayed U.S. public birth record that was recorded more than five (5) years after the person's birth; (4-2-08)
- iv. Statement signed by the physician or midwife who was in attendance at the time of birth; (3-30-07)
- v. Medical (clinic, doctor, or hospital) record; (3-30-07)
- vi. Institutional admission papers from a nursing facility, skilled care facility or other institution; (4-2-08)
- vii. Bureau of Indian Affairs (BIA) roll of Alaska Natives; or (4-2-08)

**c.** A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct." A declaration is accepted for proof of U.S. citizenship or naturalization if no other documentation is available and complies with the following: (4-2-08)

- i. Declarations must be made by two (2) persons who have personal knowledge of the events establishing the individual's claim of U.S. citizenship; (3-30-07)
- ii. One (1) of the persons making a declaration cannot be related to the individual claiming U.S. citizenship; (3-30-07)
- iii. The persons making the declaration must provide proof of their own U.S. citizenship and identity; and (3-30-07)
- iv. A declaration must be obtained from the individual applying for Medicaid, a guardian, or representative that explains why the documentation does not exist or cannot be obtained. (3-30-07)

**05. Documents Accepted for Proof of Identity but Not Citizenship.** The following documents are accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsection 104.02 through 104.04 of this rule to establish both citizenship and identity. (3-29-10)

- a.** A state-issued driver's license bearing the individual's picture or other identifying

information such as name, age, gender, race, height, weight, or eye color; (3-30-07)

**b.** A federal, state, or local government-issued identity card with the same identifying information that is included on driver's licenses as described in Subsection 104.05.a. of this rule; (3-29-10)

**c.** School identification card with a photograph of the individual; (3-30-07)

**d.** U.S. Military card or draft record; (3-30-07)

**e.** Military dependent's identification card; (3-30-07)

**f.** U. S. Coast guard Merchant Mariner card; (3-30-07)

**g.** A cross-match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system; or (4-2-08)

**h.** A declaration signed under the penalty of perjury by the facility director or administrator of a residential care facility where a disabled participant resides may be accepted as proof of identity when the individual does not have or cannot get any document in Subsections 104.05.a. through 104.05.i. of this rule. (3-29-10)

**06. Additional Documents Accepted for Proof of Identity.** If the participant provides citizenship documentation as described in Subsections 104.02 or 104.03 of this rule, three (3) or more corroborating documents may be used to prove identity. (3-29-10)

**07. Identity Rules for Children.** The following documentation of identity for children under sixteen (16) may be used: (3-30-07)

**a.** School records may be used to establish identity. Such records also include nursery or daycare records. (3-30-07)

**b.** Clinic, doctor, or hospital records. (4-2-08)

**c.** A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct," if documents listed in Subsection 104.02 of this rule are not available. A declaration may be used if it meets the following conditions: (3-29-10)

**i.** It states the date and place of the child's birth; and (3-30-07)

**ii.** It is signed by a parent or guardian. (3-30-07)

**d.** A declaration can be used for a child up to the age of eighteen (18) when documents listed in Subsection 104.05.a. through 104.05.c. of this rule are not available. (3-29-10)

**e.** A declaration cannot be used for identity if a declaration for citizenship documentation was provided for the child. (3-30-07)

**08. Eligibility for ~~Applicants and~~ Medicaid Participants Who Do Not Provide Citizenship and Identity Documentation.** (3-30-07)

~~a. Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation;~~ (3-30-07)

~~b. Any Medicaid participants, who does not have ninety (90) days to provide proof of U.S. citizenship and identity documentation, at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant:~~ **Medicaid benefits will be approved pending verification if the participant meets all other eligibility requirements. Medicaid will be denied if the participant refuses to obtain documentation.** (3-30-07)( )

~~i. Does not meet other eligibility criteria required in this chapter of rules; or~~ (3-30-07)

~~ii. Refuses to obtain the documentation.~~ (3-30-07)

**09. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation Requirements.** The following individuals are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 104.01 through 104.08 of this rule is provided: (3-29-10)

a. Supplemental Security Income (SSI) recipients; (4-2-08)

b. Individuals determined by the SSA to be entitled to or are receiving Medicare; (4-2-08)

c. Social Security Disability Income (SSDI) recipients; ~~and~~ (4-2-08)( )

d. Adoptive or foster care children receiving assistance under Title IV-B or Title IV-E of the Social Security Act; (4-2-08)( )

e. Individuals deemed eligible for Medicaid as a newborn under Section 800 of these rules; ~~and~~ (3-29-10)( )

**f. Individuals whose name and social security number are validated by the Social Security Administration data match as meeting U.S. citizenship status.** ( )

**10. Assistance in Obtaining Documentation.** The Department will assist individuals who are mentally or physically incapacitated and who lack a representative to assist them in obtaining such documentation. (3-30-07)

**11. Provide Documentation of Citizenship and Identity One Time.** When an individual has provided citizenship and identity documents, changes in eligibility will not require an individual to provide such documentation again unless later verification of the documents provided raises a question of the individual's citizenship or identity. (3-30-07)

**105. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible for AABD cash and Medicaid, an individual must be a member of one (1) of the groups listed in Subsections 105.01 through 105.17 of this rule. An individual must also provide proof of identity as provided in Section 104 of these rules. (3-29-10)

**01. U.S. Citizen.** A U.S. Citizen. (3-30-07)

**02. U.S. National, National of American Samoa or Swain's Island.** A U. S. National, National of American Samoa or Swain's Island. (3-30-07)

**03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)

**a.** At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)

**b.** The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)

**c.** The child is under eighteen (18) years of age; (3-30-07)

**d.** The child is a lawful permanent resident; and (3-30-07)

**e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)

**04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. (3-30-07)

**05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran. (3-30-07)

**06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) and remained continuously present in the U.S. until they became a qualified alien. (3-30-07)

**07. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and; (3-30-07)

**a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)



**b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)

**c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)

**d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; ~~or~~ ~~(3-20-04)~~( )

**e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; ~~(3-30-07)~~( )

**f.** Is an Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007; or ( )

**g.** Is an Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008. ( )

**08. Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years. (3-30-07)

**09. American Indian Born in Canada.** An American Indian born in Canada under 8 U.S.C. 1359. (3-30-07)

**10. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e). (3-30-07)

**11. Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance. (3-30-07)

**12. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

**a.** Is under the age of eighteen (18) years; or (3-20-04)

**b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

**i.** Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

**13. Qualified Non-Citizen Receiving Supplement Security Income (SSI).** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-20-04)

**14. Permanent Resident Receiving AABD Cash On August 22, 1996.** A permanent resident receiving AABD cash on August 22, 1996. (3-20-04)

~~**15. Afghan Special Immigrants.** An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, are eligible for eight (8) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (3-29-10)~~

~~**16. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)~~

**175. Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements.** Individuals who do not meet the citizenship or qualified non-citizen requirements in Subsections 105.01 through 105.164 of this rule, may be eligible for emergency medical services if they meet all other conditions of eligibility. (3-29-10)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

(Editor's Note: The effective date of this deletion is January 1, 2010. This is the date when the waiver was no longer a required part of the eligibility determination process.)

~~**790. IDAHO STATE SCHOOL AND HOSPITAL (ISSH) WAIVER.** To be eligible, the participant must be at least fifteen (15) years of age but less than nineteen (19) years of age and is currently at or would be placed at the Idaho State School and Hospital (ISSH) if not for waiver services. (3-20-04)~~

~~**7910. -- 798. (RESERVED).**~~

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.08 - RULES GOVERNING THE TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO (TAFI)**

**DOCKET NO. 16-0308-1001**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code, 45 CFR Parts 260-265, and Public Law 111-118.

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

**These rules were amended to better support Idaho's low-income individuals in need of temporary assistance. These rules were adopted as temporary rules that published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 16 through 21. The complete text of the proposed rules was published in the May 5, 2010, Idaho Administrative Bulletin, Vol. 10-5, pages 27 through 32. These pending rules are being adopted as proposed.**

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

**The Career Enhancement (CE) program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for TAFI participants. The fiscal impact in federal funds is \$300,000 for CE benefits, and \$24,700 for special immigrants.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Genie Sue Weppner at (208) 334-5656.

DATED this 1st day of October, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
phone (208) 334-5564; fax: (208) 334-6558

P.O. Box 83720  
Boise, ID 83720-0036  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code, 45 CFR Parts 260-265, and Public Law 111-118.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May, 19, 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. These rules were adopted as temporary rules with effective dates of December 19, 2009, and January 1, 2010. The temporary rule docket published in the [April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 16 through 21](#).

**In order to better support and assist Idaho's low-income individuals in need of temporary assistance, the Department is amending these rules to align with federal regulations and other Department chapters on excluded resources and special immigrants. The U.S. Census that is conducted every ten years hires temporary employees to conduct this field work. The Department is excluding this temporary census income from countable income in order to treat income for TAFI the same as other benefit programs. Federal regulations updated the special immigrants length of eligibility and these rules are being amended to align with those updates.**

**The Department is removing barriers that have excluded participation under the Career Enhancement (CE) services to help participants obtain or maintain employment. These changes will align with Emergency Assistance services by: removing the requirement to have a job search assistance plan, removing the restriction from CE services for anyone who received emergency assistance payments in the past 12 months, and removing housing and utility costs from prohibited supportive service expenditures.**

**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 Career Enhancement (CE) program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary**

income for TAFI participants. The fiscal impact in federal funds is \$300,000 for CE benefits, and \$24,700 for special immigrants.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes provide a benefit and align Department rules with federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 26, 2010.

DATED this 29th day of March, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-1001***

**131. CITIZENSHIP AND QUALIFIED NON-CITIZEN CRITERIA.**

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 131.01 through 131.10 of this rule. (5-8-09)

**01. U.S. Citizen.** A U.S. Citizen; or (3-20-04)

**02. U.S. National, National of American Samoa or Swains Island.** A U. S. National, National of American Samoa or Swains Island; or (3-20-04)

**03. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (3-20-04)

**04. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (3-20-04)

**05. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); or (3-20-04)

**06. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and (3-20-04)

**a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; or (3-20-04)

**b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; or (3-20-04)

**c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; or (3-20-04)

**d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-20-04)

**e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; or (3-20-04)

**07. Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has had a qualified non-citizen status for at least five (5) years; or (3-20-04)

**08. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

**a.** Is under the age of eighteen (18) years; or (3-20-04)

**b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

**i.** Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

**ii.** Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-20-04)

**09. Afghan Special Immigrants.** An Afghan special immigrant, as defined in Public Law ~~110-161~~ 111-118, who has special immigration status after December 26, 2007, is eligible ~~for eight (8) months~~ from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. ~~(3-11-09)T( )~~

**10. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law ~~110-181~~ 111-118, who has special immigration status after January 28, 2008, is eligible ~~for eight (8) months~~ from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. ~~(5-8-09)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**215. EXCLUDED INCOME.**

The types of income listed in Subsections 215.01 through 215.378 of this rule, are excluded.

~~(5-8-09)~~( )

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

- 18. Child Nutrition.** Child nutrition benefits. (7-1-98)
- 19. Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
- 20. Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
- 21. Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
- 22. Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
- 23. Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
- 24. Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
- 25. Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
- 26. Educational Income.** Educational income, except that AmeriCorps living allowances, stipends, and AmeriCorps Education Award minus attendance costs are earned income. (7-1-98)
- 27. Work Study Income of Student.** College work study income. (7-1-98)
- 28. VA Educational Assistance.** VA Educational Assistance. (7-1-98)
- 29. Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
- 30. Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
- 31. Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
- 32. Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
- 33. Agent Orange.** Agent Orange settlement payments. (7-1-98)



- 34. Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)
- 35. Japanese-American Restitution Payments.** Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)
- 36. Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)
- 37. Subsidized Employment.** Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. (5-8-09)
- 38. Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten (10) year U.S. Census. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**369. CAREER ENHANCEMENT SERVICE PLAN.**

All individuals receiving Career Enhancement Assistance must have a written Career Enhancement Service Plan ~~or a Food Stamp Job Search Assistance Program Plan (JSAPP).~~ (5-3-03)( )

**370. CAREER ENHANCEMENT ASSISTANCE ELIGIBILITY CRITERIA.**

The individual must meet the criteria in Subsections 370.01 through 370.14. (5-3-03)

**01. Application and Service Plan.** An application form must be completed for Career Enhancement Assistance, unless the family already receives services from the Food Stamp Medicaid, Idaho Child Care or Child Support Services programs. A Career Enhancement service plan must be completed for all eligible individuals. (5-3-03)

**02. Verification of Career Enhancement Eligibility.** SSN must be verified. Other eligibility criteria are verified at the discretion of the Department. (3-30-01)

**03. Eligible Individual.** The individual must not have failed, without good cause, to comply with a previous Career Enhancement Service Plan. The individual must be a parent or a caretaker relative with a dependant child in the home, a pregnant woman; or a non-custodial parent legally responsible to provide support for a dependent child who does not reside in the same home. (5-3-03)

**04. Need for Work-Related Services.** The individual must be in need of work-related

services to maintain employment or participate in work programs. The individual must participate in meeting the need to the extent possible. This requires the individual to meet a portion of the need if possible, and to explore other resources available to meet the need. (3-15-02)

**05. Income Limit.** The family must meet the income limit for only the first month of the service to receive Career Enhancement Assistance. The family's income must be below two hundred percent (200%) of the federal poverty guidelines, or the family must be eligible for Food Stamps, Medicaid or ICCP. For non-custodial parents, the family's income must be below four hundred percent (400%) of the federal poverty guidelines, or the family must be eligible for Food Stamps or Medicaid. (5-3-03)

**06. Citizenship and Legal Non-Citizen.** The individual must be a citizen or must meet the legal non-citizenship requirements of Section 131. (7-1-99)

**07. SSN.** An SSN, or proof of application for an SSN, must be provided for the individual. (3-30-01)

**08. Residence.** The individual must live in the state of Idaho and must not be a resident of another state. (7-1-99)

**09. Duplication of Services.** Career Enhancement Assistance must not be provided for a need already met by Emergency Assistance under IDAPA 16.06.01, "Rules Governing Family and Children's Services," or by a one-time TAFI cash payment. (5-3-03)

**10. TANF Restrictions.** The family must not be receiving TANF or TAFI benefits or be serving a TAFI sanction. Participants must not receive Career Enhancement Assistance if they have received five (5) years of TANF benefits. The family must not be receiving TANF Extended Cash Assistance. ~~If the participant received an Emergency Assistance to Needy Families with Children payment within the past twelve (12) months, the participant cannot receive Career Enhancement Assistance.~~ The participant cannot receive Career Enhancement Assistance if they have received it within the past twelve (12) months. (5-3-03)( )

**11. Controlled Substance Felons.** Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use or distribution of a controlled substance can receive Career Enhancement Assistance when they comply with the terms of a withheld judgment, probation or parole. The felony must have occurred after August 22, 1996. (5-3-03)

**12. Fleeing Felons.** Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony cannot receive Career Enhancement Assistance. (5-3-03)

**13. Probation or Parole Violation.** Felons who are violating a condition of probation or parole imposed for a federal or state felony cannot receive Career Enhancement Assistance. (5-3-03)

**14. Fraud.** Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid, or SSI, from two (2) or

more states at the same time, cannot receive Career Enhancement Assistance for ten (10) years from the date of conviction. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**376. PROHIBITED SUPPORTIVE SERVICE EXPENDITURES.**

Supportive Service expenditures must not be authorized for the following types of expenses: (5-3-03)

- 01. Child Care.** Child care of any type. (5-3-03)
- 02. Medical Services.** Medical services, including medical exams. (5-3-03)
- 03. Vehicles.** Motorized vehicle purchases, and down payments, ~~and payment arrearages.~~ (5-3-03)( )
- ~~**04. Housing and Utility Costs.** Security deposits, payments on arrearages, current monthly payments, and future monthly payments. (5-3-03)~~
- 054. Services for Children.** Services or payments for a child, such as counseling, clothing, and school supplies. (5-3-03)
- ~~**065. Credit Card Accounts.** Payments on charge cards. (5-3-03)~~
- ~~**076. Household Items.** Furniture and major home appliances. (5-3-03)~~
- ~~**087. Fines.** Any type. (5-3-03)~~
- ~~**098. Professional Union or Trade Dues.** Any type. (5-3-03)~~
- ~~**109. Any Service.** Available through another resource. (5-3-03)~~

# **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

## **16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1001**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is **July 1, 2010**. This pending rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 55-819 and 56-225, Idaho Code, adopted by the 2010 Legislature under Senate Bill 1321.

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

**The Department is making changes to the proposed rule and amending the temporary rule in this docket concerning the request for notice of transfer or encumbrance.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 70 through 77.](#)**

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

**This rule change will have no negative fiscal impact to the state general funds. This change should have a positive fiscal effect by preventing improper asset transfers and increase recovery of assets that otherwise would be missed.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Larry Tisdale at (208) 287-1141.

DATED this 4th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

***THIS NOTICE PUBLISHED WITH THE 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 rulemaking procedures have been initiated. The action is authorized pursuant to Sections 55-819 and 56-225, Idaho Code, adopted by the 2010 Legislature under Senate Bill 1321.

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

**Statute changes effective on July 1, 2010, required the Department to provide a model form for notice of transfer or encumbrance to be used by a Medicaid recipient or his representative when notifying the Department of transferring real property. This requirement for a request of notice form is being added into Section 900, Liens and Estate Recovery. Because this section is long and cumbersome, the Department decided to reformat the rule into more user friendly sections at this time. Other minor changes have been made for clarity and understanding of these rules.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary for compliance with deadlines in amendments to governing law.

**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:

**This rule change will have no negative fiscal impact to the state general funds. This change should have a positive fiscal effect by preventing improper asset transfers and increase recovery of assets that otherwise would be missed.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to meet statutory changes adopted by the 2010 Legislature under Senate Bill 1321.

**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 Larry Tisdale at (208) 287-1141.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 30th day of June, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1001***

***SUB AREA: LIENS AND ESTATE RECOVERY***  
***(Section 900 - 909)***

**900. LIENS AND ESTATE RECOVERY.**

In accordance with Sections 55-819, 56-218, and 56-218A, and 56-225, Idaho Code, this Section of rule sets forth the provisions for recovery of medical assistance, the filing of liens against the property of deceased persons, and the filing of liens against the property of permanently institutionalized participants, and the recording of requests for notice. (3-30-07)(\_\_\_\_)

**01. Medical Assistance Incorrectly Paid.** The Department may, pursuant to a judgment of a court, file a lien against the property of a living or deceased person of any age to recover the costs of medical assistance incorrectly paid. (3-30-07)

**02. Administrative Appeals.** Permanent institutionalization determination, ~~and~~ undue hardship waiver, and request for notice hearings are governed by the fair hearing provisions of IDAPA 16, ~~Title~~.05, ~~Chapter~~.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (3-30-07)( )

**03901. LIENS AND ESTATE RECOVERY - DEFINITIONS.**

The following terms are applicable to Sections 900 through 909 of this chapter of rules:

(3-30-07)( )

**a01. Authorized Representative.** The person appointed by the court as the personal representative in a probate proceeding or, if none, the person identified by the participant to receive notice and make decisions on estate matters. (3-30-07)

**b02. Discharge From a Medical Institution.** A medical decision made by a competent medical professional that the Medicaid participant no longer needs nursing home care because the participant's condition has improved, or the discharge is not medically contraindicated. (3-30-07)

**e03. Equity Interest in a Home.** Any equity interest in real property recognized under Idaho law. (3-30-07)

**a04. Estate.** All real and personal property and other assets including those in which the participant had any legal or beneficial title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assignee of the deceased participant through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement. (3-30-07)

**e05. Home.** The dwelling in which the participant has an ownership interest, and which the participant occupied as his primary dwelling prior to, or subsequent to, his admission to a medical institution. (3-30-07)

**f06. Institutionalized Participant.** An inpatient in a nursing facility (NF), intermediate care facility for people with intellectual disabilities (ICF/ID), or other medical institution, who is a Medicaid participant subject to post-eligibility treatment of income in IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD).” (3-30-07)

**g07. Lawfully Residing.** Residing in a manner not contrary to or forbidden by law, and with the participant's knowledge and consent. (3-30-07)

**h08. Permanently Institutionalized.** An institutionalized participant of any age who the Department has determined cannot reasonably be expected to be discharged from the institution and return home. Discharge refers to a medical decision made by a competent medical professional that the participant is physically able to leave the institution and return to live at home. (3-30-07)

**i09. Personal Property.** Any property not real property, including cash, jewelry, household goods, tools, life insurance policies, boats and wheeled vehicles. (3-30-07)

**~~j~~10. Real Property.** Any land, including buildings or immovable objects attached permanently to the land. (3-30-07)

**~~k~~11. Residing in the Home on a Continuous Basis.** Occupying the home as the primary dwelling and continuing to occupy such dwelling as the primary residence. (3-30-07)

**~~l~~12. Termination of a Lien.** The release or dissolution of a lien from property. (3-30-07)

**~~m~~13. Undue Hardship.** Conditions that justify waiver of all or a part of the Department's claim against an estate, described in Subsections ~~900.25~~ **905.06** through ~~900.29~~ **905.10** of ~~this~~ **these** rules. (~~3-30-07~~)(    )

**~~n~~14. Undue Hardship Waiver.** A decision made by the Department to relinquish, limit, or defer its claim to any or all estate assets of a deceased participant based on good cause. (3-30-07)

**~~04902. LIENS AND ESTATE RECOVERY - NOTIFICATION TO DEPARTMENT.~~**

All notification regarding liens, ~~and~~ estate claims, **and requests for notice** must be directed to the Department of Health and Welfare, Estate Recovery Unit, 3276 Elder, Suite B, P.O. Box 83720, Boise, Idaho, 83720-0036. (~~3-30-07~~)(    )

**~~903. LIENS AND ESTATE RECOVERY - LIEN DURING LIFETIME OF PARTICIPANT.~~**

**~~051. Lien Imposed During Lifetime of Participant.~~** During the lifetime of the permanently institutionalized participant, and subject to the restrictions set forth in Subsection ~~900.08~~ **903.04** of this rule, the Department may impose a lien against the real property of the participant for medical assistance correctly paid on his behalf. The lien must be filed within ninety (90) days of the Department's final determination, after notice and opportunity for a hearing, that the participant is permanently institutionalized. The lien is effective from the beginning of the most recent continuous period of the participant's institutionalization, but not before July 1, 1995. Any lien imposed will dissolve upon the participant's discharge from the medical institution and return home. (~~3-30-07~~)(    )

**~~062. Determination of Permanent Institutionalization.~~** The Department must determine that the participant is permanently institutionalized prior to the lien being imposed. An expectation or plan that the participant will return home with the support of Home and Community Based Services does not, in and of itself, justify a decision that he is reasonably expected to be discharged to return home. The following factors must be considered when making the determination of permanent institutionalization: (3-30-07)

**a.** The participant must meet the criteria for nursing facility or ICF/ID level of care and services as set forth in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 220 through 299, and 580 through 649; (3-30-07)

**b.** The medical records must be reviewed to determine if the participant's condition is expected to improve to the extent that he will not require nursing facility or ICF/D level of care;



and (3-30-07)

c. Where the prognosis indicated in the medical records is uncertain or inconclusive, the Department may request additional medical information, or may delay the determination until the next utilization control review or annual Inspection of Care review, as appropriate. (3-30-07)

**073. Notice of Determination of Permanent Institutionalization and Hearing Rights.** The Department must notify the participant or his authorized representative, in writing, of its intention to make a determination that the participant is permanently institutionalized, and that he has the right to a fair hearing in accordance with Subsection 900.02 of ~~this~~ these rules. This notice must ~~include~~ inform the participant of the following information, at a minimum:  
(3-30-07)( )

a. The ~~notice must inform the participant that the~~ Department's decision that he cannot reasonably be expected to be discharged from the medical institution to return home is based upon a review of the medical records and plan of care, but that this does not preclude him from returning home with services necessary to support nursing facility or ICF/ID level of care; and  
(3-30-07)( )

b. ~~The notice must inform the participant that h~~He or his authorized representative may request a fair hearing prior to the Department's final determination that he is permanently institutionalized. The notice must include information that a pre-hearing conference may be scheduled prior to a fair hearing. The notice must include the time limits and instructions for requesting a fair hearing.  
(3-30-07)( )

c. ~~The notice must inform the participant that i~~If he or his authorized representative does not request a fair hearing within the time limits specified, his real property, including his home, may be subject to a lien, contingent upon the restrictions in Subsection ~~900.08~~ 903.04 of this rule.  
(3-30-07)( )

**084. Restrictions on Imposing Lien During Lifetime of Participant.** A lien may be imposed on the participant's real property; however, no lien may be imposed on the participant's home if any of the following is lawfully residing in such home: (3-30-07)

a. The spouse of the participant; (3-30-07)

b. The participant's child who is under age twenty-one (21), or who is blind or disabled as defined in 42 U.S.C. 1382c as amended; or (3-30-07)

c. A sibling of the participant who has an equity interest in the participant's home and who was residing in such home for a period of at least one (1) year immediately before the date of the participant's admission to the medical institution, and who has been residing in the home on a continuous basis. (3-30-07)

**095. Restrictions on Recovery on Lien Imposed During Lifetime of Participant.** Recovery will be made on the lien from the participant's estate, or at any time upon the sale of the property subject to the lien, but only after the death of the participant's surviving spouse, if any, and only at a time when: (3-30-07)

- a. The participant has no surviving child who is under age twenty-one (21); (3-30-07)
- b. The participant has no surviving child of any age who is blind or disabled as defined in 42 U.S.C. 1382c as amended; and (3-30-07)
- c. In the case of a lien on a participant's home, when none of the following is lawfully residing in such home who has lawfully resided in the home on a continuous basis since the date of the participant's admission to the medical institution: (3-30-07)
- i. A sibling of the participant, who was residing in the participant's home for a period of at least one (1) year immediately before the date of the participant's admission to the medical institution; or (3-30-07)
- ii. A son or daughter of the participant, who was residing in the participant's home for a period of at least two (2) years immediately before the date of the participant's admission to the medical institution, and who establishes by a preponderance of the evidence that he provided necessary care to the participant, and the care he provided allowed the participant to remain at home rather than in a medical institution. (3-30-07)

**~~106.~~ Recovery Upon Sale of Property Subject to Lien Imposed During Lifetime of Participant.** Should the property upon which a lien is imposed be sold prior to the participant's death, the Department will seek recovery of all medical assistance paid on behalf of the participant, subject to the restrictions in Subsection ~~900.09~~ **903.05** of ~~these~~ **this** rules. Recovery of the medical assistance paid on behalf of the participant from the proceeds from the sale of the property does not preclude the Department from recovering additional medical assistance paid from the participant's estate as described in Subsection ~~900.14~~ **904.01** of ~~this~~ **these** rules. (~~3-30-07~~)( )

**~~107.~~ Filing of Lien During Lifetime of Participant.** When appropriate, the Department will file, in the office of the Recorder of the county in which the real property of the participant is located, a verified statement, in writing, setting forth the following: (3-30-07)

- a. The name and last known address of the participant; and (3-30-07)
- b. The name and address of the official or agent of the Department filing the lien; and (3-30-07)
- c. A brief description of the medical assistance received by the participant; and (3-30-07)
- d. The amount paid by the Department, as of a given date, and, if applicable, a statement that the amount of the lien will increase as long as medical assistance benefits are paid on behalf of the participant. (3-30-07)

**~~108.~~ Renewal of Lien Imposed During Lifetime of Participant.** The lien, or any extension thereof, must be renewed every five (5) years by filing a new verified statement as

required in Subsection ~~900.11~~ 903.07 of this rule, or as required by Idaho law. (~~3-30-07~~)( )

**1309. Termination of Lien Imposed During Lifetime of Participant.** The lien will be released as provided by Idaho Code, upon satisfaction of the Department's claim. The lien will dissolve in the event of the participant's discharge from the medical institution and return home. Such dissolution of the lien does not discharge the underlying debt and the estate remains subject to recovery under estate recovery provisions in Subsections ~~900.14 through 900.30~~ 904 and 905 of ~~this~~ these rules. (~~3-30-07~~)( )

#### **14904. LIENS AND ESTATE RECOVERY - REQUIREMENTS FOR ESTATE RECOVERY.**

**01. Estate Recovery Requirements.** In accordance Sections 56-218 and 56-218A, Idaho Code, the Department is required to recover the following: (~~3-30-07~~)( )

**a.** The costs of all medical assistance correctly paid on or after July 1, 1995, on behalf of a participant who was permanently institutionalized; (3-30-07)

**b.** The costs of medical assistance correctly paid on behalf of a participant who received medical assistance at age fifty-five (55) or older on or after July 1, 1994; and (3-30-07)

**c.** The costs of medical assistance correctly paid on behalf of a participant who received medical assistance at age sixty-five (65) or older on or after July 1, 1988. (3-30-07)

**1502. Recovery From Estate of Spouse.** Recovery from the estate of the spouse of a Medicaid participant may be made as permitted in Sections 56-218 and 56-218A, Idaho Code. (3-30-07)

**1603. Lien Imposed Against Estate of Deceased Participant.** Liens may be imposed against the estates of deceased Medicaid participants and their spouses as permitted by Section 56-218, Idaho Code. (3-30-07)

**1704. Notice of Estate Claim.** The Department will notify the authorized representative of the amount of the estate claim after the death of the participant, or after the death of the surviving spouse. The notice must include instructions for applying for an undue hardship waiver. (3-30-07)

**1805. Assets in Estate Subject to Claims.** The authorized representative will be notified of the Department's claim against the assets of a deceased participant. Assets in the estate from which the claim can be satisfied must include all real or personal property that the deceased participant owned or in which he had an ownership interest, including the following: (3-30-07)

**a.** Payments to the participant under an installment contract will be included among the assets of the deceased participant. This includes an installment contract on any real or personal property to which the deceased participant had a property right. The value of a promissory note, loan or property agreement is its outstanding principal balance at the date of death of the participant. When a promissory note, loan, or property agreement is secured by a Deed of Trust, the Department may request evidence of a reasonable and just underlying debt. (3-30-07)

**b.** The deceased participant's ownership interest in an estate, probated or not probated, is an asset of his estate when: (3-30-07)

i. Documents show the deceased participant is an eligible devisee or donee of property of another deceased person; or (3-30-07)

ii. The deceased participant received income from property of another person; or (3-30-07)

iii. State intestacy laws award the deceased participant a share in the distribution of the property of another estate. (3-30-07)

**c.** Any trust instrument which is designed to hold or to distribute funds or property, real or personal, in which the deceased participant had a beneficial interest is an asset of the estate. (3-30-07)

**d.** Life insurance is considered an asset when it has reverted to the estate. (3-30-07)

**e.** Burial insurance is considered an asset when a funeral home is the primary beneficiary or when there are unspent funds in the burial contract. Any funds remaining after payment to the funeral home will be considered assets of the estate. (3-30-07)

**f.** Checking and savings accounts which hold and accumulate funds designated for the deceased participant, are assets of the estate, including joint accounts which accumulate funds for the benefit of the participant. (3-30-07)

**g.** In a conservatorship situation, if a court order under state law specifically requires funds be made available for the care and maintenance of a participant prior to his death, absent evidence to the contrary, such funds are an asset of the deceased participant's estate, even if a court has to approve release of the funds. (3-30-07)

**h.** Shares of stocks, bonds and mutual funds to the benefit of the deceased participant are assets of the estate. The current market value of all stocks, bonds and mutual funds must be proved as of the month preceding settlement of the estate claim. (3-30-07)

**1906. Value of Estate Assets.** The Department will use fair market value as the value of the estate assets. (3-30-07)

**905. LIENS AND ESTATE RECOVERY - LIMITATIONS AND EXCLUSIONS.**

**201. Limitations on Estate Claims.** Limits on the Department's claim against the assets of a deceased participant or spouse are subject to Sections 56-218 and 56-218A, Idaho Code. A claim against the estate of a spouse of a participant is limited to the value of the assets of the estate that had been, at any time after October 1, 1993, community property, or the deceased participant's share of the separate property, and jointly owned property. Recovery will not be made until the deceased participant no longer is survived by a spouse, a child who is under age twenty-one (21), or a blind or disabled child, as defined in 42 U.S.C. 1382c as amended and,

when applicable, as provided in Subsection ~~900.09~~ 903.05 of ~~this~~ these rules. No recovery will be made if the participant received medical assistance as the result of a crime committed against the participant. ~~(3-30-07)~~(    )

**2402. Expenses Deducted From Estate.** The following expenses may be deducted from the available assets to determine the amount available to satisfy the Department's claim:(3-30-07)

**a.** Burial expenses, which include only those reasonably necessary for embalming, transportation of the body, cremation, flowers, clothing, and services of the funeral director and staff may be deducted. (3-30-07)

**b.** Other legally enforceable and necessary debts with priority may be deducted. The Department's claim is classified and paid as a debt with preference as defined in Section 15-03-805, Idaho Code. Debts of the deceased participant that may be deducted from the estate prior to satisfaction of the Department's claim must be legally enforceable debts given preference over the Department's claim under Section 15-03-805, Idaho Code. (3-30-07)

**2403. Interest on Claim.** The Department's claim does not bear interest except as otherwise provided by statute or agreement. (3-30-07)

**2404. Excluded Land.** Restricted allotted land, owned by a deceased participant who was an enrolled member of a federally recognized American Indian tribe, or eligible for tribal membership, which cannot be sold or transferred without permission from the Indian tribe or an agency of the Federal Government, will not be subject to estate recovery. (3-30-07)

**2405. Marriage Settlement Agreement or Other Such Agreement.** A marriage settlement agreement or other such agreement which separates assets for a married couple does not eliminate the debt against the estate of the deceased participant or the spouse. Transfers under a marriage settlement agreement or other such agreement may be voided if not for adequate consideration. (3-30-07)

**2506. Release of Estate Claims.** The Department will release a claim when the Department's claim has been fully satisfied and may release its claim under the following conditions: (3-30-07)

**a.** When an undue hardship waiver as defined in Subsection ~~900.26~~ 905.07 of this rule has been granted; or ~~(3-30-07)~~(    )

**b.** When a written agreement with the authorized representative to pay the Department's claim in thirty-six (36) monthly payments or less has been achieved. (3-30-07)

**2607. Purpose of the Undue Hardship Exception.** The undue hardship exception is intended to avoid the impoverishment of the deceased participant's family due to the Department exercising its estate recovery right. The fact that family members anticipate or expect an inheritance, or will be inconvenienced economically by the lack of an inheritance, is not cause for the Department to declare an undue hardship. (3-30-07)

**2708. Application for Undue Hardship Waiver.** An applicant for an undue hardship

waiver must have a beneficial interest in the estate and must apply for the waiver within ninety (90) days of the death of the participant or within thirty (30) days of receiving notice of the Department's claim, whichever is later. The filing of a claim by the Department in a probate proceeding constitutes notice to all heirs. (3-30-07)

**2809. Basis for Undue Hardship Waiver.** Undue hardship waivers will be considered in the following circumstances: (3-30-07)

**a.** The estate subject to recovery is income-producing property that provides the primary source of support for other family members; or (3-30-07)

**b.** Payment of the Department's claim would cause heirs of the deceased participant to be eligible for public assistance; or (3-30-07)

**c.** The Department's claim is less than five hundred dollars (\$500) or the total assets of the entire estate are less than five hundred dollars (\$500), excluding trust accounts or other bank accounts. (3-30-07)

**d.** The participant received medical assistance as the result of a crime committed against the participant. (3-30-07)

**2910. Limitations on Undue Hardship Waiver.** Any beneficiary of the estate of a deceased participant may apply for waiver of the estate recovery claim based on undue hardship. Any claim may be waived by the Department, partially or fully, because of undue hardship. An undue hardship does not exist if action taken by the participant prior to his death, or by his legal representative, divested or diverted assets from the estate. The Department grants undue hardship waivers on a case by case basis upon review of all facts and circumstances, including any action taken to diminish assets available for estate recovery or to circumvent estate recovery. (3-30-07)

**3011. Set Aside of Transfers.** Transfers of real or personal property of the participant without adequate consideration are voidable and may be set aside by the district court whether or not the asset transfer resulted, or could have resulted, in a period of ineligibility. (3-30-07)

**906. LIENS AND ESTATE RECOVERY - REQUEST FOR NOTICE.**

**01. Request for Notice - Notice - Hearing.** The Department must notify the participant or his authorized representative, in writing, of its intention to record a request for notice, and that he has the right to a fair hearing in accordance with Subsection 900.02 of these rules. The notice must inform the participant of the following information, at a minimum: ( )

**a.** The Department's determination that he is the record titleholder or purchaser under a land sale contract of real property subject to a request for notice; ( )

**b.** He or his authorized representative may request a fair hearing prior to the Department's recording a request for notice. The notice must include the time limits and instructions for requesting a fair hearing; and ( )

**c.** If he or his authorized representative does not request a fair hearing within the time

limits specified, a request for notice applying to his real property, including his home, may be recorded. ( )

**02. Request for Notice - Forms - Content.** The notices must include, at a minimum, the following information: ( )

**a.** The name of the public assistance recipient and the spouse of such public assistance recipient, if any; ( )

**b.** The Medicaid number for the public assistance recipient and spouse, if any; ( )

**c.** The legal description of the real property affected or to be affected; ( )

**d.** The mailing address at which the Department is to receive notice as provided in Section 902 of these rules; ( )

**e.** If the document is a Notice of Transfer or Encumbrance, the name and address of the transferee or lien holder; and ( )

**f.** A fully executed acknowledgement as required for recording under Section 55-805, Idaho Code. ( )

**03. Webpages for Forms.** The forms may be found at: ( )

**a.** Notice of Transfer or Encumbrance: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=sDegNIDVB2w%3d&tabid=123&mid=6527>. ( )

**b.** Request for Notice: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=HyIdxO7wyw8%3d&tabid=123&mid=6527>. ( )

**c.** Termination of Request for Notice: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=m5xQcFrELTQ%3d&tabid=123&mid=6527>. ( )

**907. -- 909. (RESERVED).**

# **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

## **16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1002**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202(b), Idaho Code, and 2010 Legislation under House Bill 701, the Medicaid appropriations budget.

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

**The Department of Health and Welfare implemented a selective contract system for the federally mandated non-emergency medical transportation services for Medicaid participants. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 78 through 85.](#)**

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

**The estimated cost avoidance for the remaining 10 months for state fiscal year 2011 using a non-emergency medical transportation brokerage contractor is \$434,417. Of this amount, \$99,138 would be state general funds, and \$335,279 would be federal funds using the current federal match rate.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sara Stith at (208) 287-1173.

DATED this 27th day of October, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
(208) 334-5564 phone; (208) 334-6558 fax

P.O. Box 83720  
Boise, ID 83720-0036  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov) e-mail



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

**EFFECTIVE DATE:** The effective date of these temporary rules are **September 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 56-202(b), Idaho Code, and 2010 Legislation under House Bill 701, the Medicaid appropriations budget.

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

**SPECIAL NOTE:** Department staff will be available at the hearing site for a question and answer session about the Non-Emergency Medical Transportation rule changes beginning at 2:00 p.m. The Public Hearing will begin promptly at 2:30 p.m.

**Friday, August 13, 2010 at 2:00 p.m.**

**Region IV Health & Welfare Office  
1720 Westgate Drive  
Suite A, Room 131  
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 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 of Health and Welfare is implementing a selective contract system for the federally mandated non-emergency medical transportation services based on legislative intent for controlling costs, while improving quality and sustaining access. These rules provide the non-emergency medical transportation requirements for a transportation brokerage system for Medicaid participants who have no other means to receive Medicaid-covered services.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary for compliance with deadlines in amendments to governing law.

**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 estimated cost avoidance for the remaining 10 months for state fiscal year 2011 using a non-emergency medical transportation brokerage contractor is \$940,775. Of this amount, \$188,155 would be state general funds, and \$752,620 would be federal funds using the current federal match rate.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to meet Medicaid's appropriations budget adopted by the 2010 Legislature under House Bill 701.

**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 Sara Stith at (208) 287-1173.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 16th day of July, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1002***

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance With Department Criminal History Check.** Criminal history checks are required for certain types of providers under these rules. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (3-30-07)

**02. Availability to Work or Provide Service.** (3-30-07)

**a.** The employer, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health

and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records. (3-30-07)

b. Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (3-30-07)

**03. Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the agency to the Department when the agency learns of the conviction. (3-30-07)

**04. Providers Subject to Criminal History Check Requirements.** The following providers must receive a criminal history clearance: (3-30-07)

a. Mental Health Clinics. The criminal history check requirements applicable to mental health clinic staff are found in Subsection 714.05 of these rules. (3-30-07)

b. ~~Commercial Contracted~~ Non-Emergency ~~Medical~~ Transportation Providers. ~~The criminal history check requirements applicable to commercial non-emergency~~ All staff of transportation providers ~~are found in~~ having contact with participants must comply with IDAPA 16.05.06, "Criminal History and Background Checks," with the exception of individual contracted transportation providers defined in Subsection 8740.05 of these rules. ~~(3-30-07)~~( )

c. Substance Abuse Treatment Providers. The criminal history check requirements applicable to substance abuse treatment providers are found in Section 694 of these rules. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**870. NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES -- DEFINITIONS.**

For the purposes of Sections 870 through 879 of these rules, the following definitions apply. ( )

**01. ~~Commercial Contracted~~ Transportation Provider.** ~~A commercial transportation provider is an entity in the business of transportation that is organized to provide, that publicly holds itself out to provide, and that actually provides personal transportation services to the general public. By "holding itself out" to the general public, the provider vigorously and diligently solicits riders from the general populace, as opposed to primarily serving riders from one (1) or more congregate living facilities. By "actually providing" services to the general public, the provider's riders include substantial numbers of persons whose travel is funded by a source other than Medicaid.~~ A non-emergency medical transportation provider who is under contract with the transportation broker to provide non-emergency medical transportation for Medicaid participants. ~~(3-30-07)~~( )

**02. Individual Contracted Transportation Provider.** An individual who is under contract with the transportation broker to provide non-emergency medical transportation for a Medicaid participant in the provider's personal vehicle. ( )

**023. Non-Commercial Emergency Medical Transportation Provider.** Any Non-emergency medical transportation ~~provider that does not meet the definition of a commercial transportation provider~~ is a non-commercial transportation provider that is: (3-30-07)( )

**a.** Not of an emergency nature; and ( )

**b.** Required for a Medicaid participant to access medically necessary services covered by Medicaid when the participant's own transportation resources, family transportation resources, or community transportation resources do not allow the participant to reach those services. ( )

**034. Agency Transporters.** ~~Agency transporters are entities that provide transportation as well as at least one other service to one or more Medicaid participants. Individual transporters are non-commercial providers who transport a family member, acquaintance or other person in a personal vehicle.~~ **Transportation Broker.** An entity under contract with the Department to administer, coordinate, and manage a statewide network of non-emergency medical transportation providers. (3-30-07)( )

**05. Travel-Related Services.** Travel-related services are meals, lodging, and attendant care required for non-emergency medical transportation to be completed for a Medicaid participant. ( )

**871. (RESERVED) NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES - DUTIES OF THE TRANSPORTATION BROKER.**

The transportation broker under contract with the Department is required to: ( )

**01. Coordinate and Manage.** Coordinate and manage all non-emergency medical transportation services for Medicaid participants statewide. ( )

**02. Contract With Transportation Providers.** Contract with transportation providers throughout the state to provide non-emergency medical transportation services for Medicaid participants. ( )

**03. Call Center.** Operate a call center to receive and review non-emergency medical transportation for Medicaid participants meeting the requirements in Section 872 of these rules. ( )

**04. Authorize Non-emergency Medical Transportation Services.** Authorize non-emergency medical transportation services for Medicaid participants requesting transportation and who meet the requirements in Section 872 of these rules. ( )

**05. Reimburse Contracted Transportation Providers.** Reimburse contracted transportation providers for non-emergency medical transportation services meeting the

requirements in Section 872 of these rules. ( )

**06. Safe and Professional Transportation.** Assure that contracted transportation providers deliver non-emergency medical transportations services in a safe and professional manner. ( )

**872. NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES -- COVERAGE AND LIMITATIONS.**

**01. ~~General Coverage for~~ Non-Emergency Medical Transportation Services.** ~~Non-emergency transportation is all transportation that is not of an emergency nature, including non-medical transportation under waiver programs. An emergency is a condition described in Section 861 of these rules. Medicaid~~ The transportation broker will reimburse contracted transportation providers for non-emergency medical transportation ~~by commercial or non-commercial transportation providers~~ services under the following ~~circumstances and limitations~~ conditions:

(3-30-07)( )

**a.** The travel is essential to get to or from a medically necessary Medicaid covered service ~~or a waiver service covered by Medicaid;~~ (3-30-07)( )

~~**b.** The person for whom services are billed is actually transported for all the distance billed;~~ (3-30-07)

**eb.** The mode of transportation is the lowest in least costly ~~to the Medicaid program~~ that is appropriate to for the medical needs of the participant; (3-30-07)( )

~~**dc.** The transportation is to the nearest medical ~~or waiver service~~ provider appropriate to perform the needed services, and transportation is by the most direct route practicable. Reimbursement will be limited to the distance of the most direct route practicable; and~~ (3-30-07)( )

**ed.** Other modes of transportation, including personal vehicle, assistance by family, friends, and charitable organizations, are unavailable or impractical under the circumstances; ~~and~~ (3-30-07)( )

**fe.** The travel is authorized ~~by the Department prior to the transportation.~~ and scheduled by the transportation broker; and (3-30-07)( )

**f.** The contracted transportation provider is in compliance with the terms of its contract with the transportation broker. ( )

**02. Exceptions.** ~~Despite the preceding rules, Medicaid will cover transportation services under the following circumstances:~~ (3-30-07)

~~**a.** Transportation services may be retroactively approved when a participant is found retroactively eligible, the transportation service falls within the period of retroactive eligibility, and the transporter was a Medicaid transportation provider at the time of the transport for which reimbursement is sought.~~ (3-30-07)

~~b. For Subsection 872.02 of this rule, a trip is the distance a transporter carries a participant in the course of a day. Therefore, the total mileage of a round-trip transport that takes place within one (1) day will be considered in determining whether this exception applies. Even though prior approval is not required, the transporter shall maintain all records as described in Subsection 874.02 of these rules. This exception is not available to commercial providers.~~

~~(3-30-07)~~

~~i. Agency Transporters. If the trip distance is less than twenty-one (21) miles per day, prior approval for non-commercial non-waiver transport is not necessary.~~

~~(3-30-07)~~

~~ii. Individual Transportation Providers. If the trip distance is less than two hundred (200) miles one-way or four hundred (400) miles roundtrip per day, prior approval for non-commercial non-waiver transport is not necessary.~~

~~(3-30-07)~~

~~e. Non-Emergency transportation for Medicaid participants who are also eligible for Medicare ("dual eligibles") when they require transportation to pick up their medications covered under Medicare, Part D.~~

~~(3-30-07)~~

~~03. Services Incidental to Travel. Medicaid will reimburse for the reasonable cost actually incurred of meals, lodging, a personal assistant and other necessary services incidental to travel, only as described in Section 873 and Subsection 875.02 of these rules.~~

~~(3-30-07)~~

~~04. Non-Commercial Transportation Provider. Non-commercial transportation services may be performed by an agency or by an individual provider. If the Medicaid participants being transported are also participants of the transportation provider for services such as residential care, mental health, developmental therapy or other services, the provider will be considered a non-commercial provider with respect to those participants, even if the provider otherwise qualifies as a commercial transporter. A provider will be considered non-commercial with respect to any Medicaid participants transported if those participants are being transported to or from another service in which the provider has any ownership or control or if the arrangement to provide transportation is not an arm's length transaction.~~

~~(3-30-07)~~

~~05. Hardship Exception for Non-Commercial Transportation Providers. The Department may grant an exception on the basis of hardship. The provider must submit information to show at minimum that its reasonable costs of vehicle operation exceed the applicable reimbursement rate. In evaluating requests for exception, the Department will consider factors such as alternative forms of services and transportation available in the area, the cost of alternatives, the appropriateness of the vehicles utilized and the benefit to participants. Special consideration may be given to any provider servicing the area through a grant from the Federal Transit Administration. The Department may limit the exception including the amount of additional reimbursement, the type of services to which transportation is being provided, and the time duration of the exception.~~

~~(3-30-07)~~

~~06. Out-of-State Transport. If payment is requested for transportation costs to receive the out-of-state medical care, the Department will determine if appropriate, comparable medical care is available closer to the participant's residence. If such care is available, the Department will limit authorization to payment for transportation costs associated with a trip to the closer~~

~~location. If it is determined necessary and appropriate for the medical care to be rendered at the out-of-state location, then the Department will authorize payment for transportation costs associated with a trip to the out-of-state location. Reimbursement for transportation costs to receive out-of-state medical care requires prior authorization. (3-30-07)~~

**02. Travel-Related Services.** The transportation broker will reimburse a contracted transportation provider for travel-related services under the following circumstances: ( )

**a.** The reasonable cost of meals actually incurred in transit will be reimbursed for the participant when there is no other practical means of obtaining food. ( )

**b.** The reasonable cost for lodging actually incurred for the participant will be reimbursed when: ( )

**i.** The round trip and the needed medical service cannot be completed in the same day; and ( )

**ii.** No less costly alternative is available. ( )

**c.** The reasonable cost of wages for an attendant will be reimbursed when: ( )

**i.** An attendant is medically necessary or when the vulnerability of the participant requires accompaniment for safety; and ( )

**ii.** No family member or other unpaid attendant is available to accompany the participant. ( )

**d.** The reasonable cost of meals actually incurred in transit will be reimbursed for one (1) family member or one (1) attendant, when: ( )

**i.** Attendant care is medically necessary or when the vulnerability of the participant requires accompaniment for safety; and ( )

**ii.** There is no other practical means of obtaining food. ( )

**e.** The reasonable cost of lodging actually incurred will be reimbursed for one (1) family member or one (1) attendant when: ( )

**i.** An overnight stay is required to receive the service; ( )

**ii.** It is medically necessary or the vulnerability of the participant requires accompaniment for safety; and ( )

**iii.** No less costly alternative is available. ( )

~~873. NON-EMERGENCY TRANSPORTATION SERVICES: PROCEDURAL REQUIREMENTS.~~

~~Authorization for the travel reimbursement must be requested from the Department at least~~

~~twenty-four (24) hours in advance of the travel excluding Saturdays, Sundays, and state holidays, unless one of the exceptions described in Subsection 872.02.a. or Subsection 872.02.b. of these rules applies. (3-30-07)~~

~~**874. NON-EMERGENCY TRANSPORTATION SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**~~

~~**01. Commercial Transportation Providers.** Each commercial transportation provider must, at minimum, meet the following standards: (3-30-07)~~

~~**a.** Maintain all certifications and licenses for drivers and vehicles required by all public transportation laws, regulations, ordinances that apply to the transportation provider. (3-30-07)~~

~~**b.** Adhere to all laws, rules and regulations applicable to transportation providers of that type, including those requiring liability insurance. Liability insurance will be carried in an amount to cover at least five hundred thousand dollars (\$500,000) personal injury and five hundred thousand dollars (\$500,000) property damage per occurrence. (3-30-07)~~

~~**c.** Enter into a Medicaid provider agreement and enrollment application. (3-30-07)~~

~~**d.** Each commercial provider must maintain the following records for a minimum of five (5) years. (3-30-07)~~

~~**i.** Prior authorization documents. (3-30-07)~~

~~**ii.** Name of participant and Medicaid ID number. (3-30-07)~~

~~**iii.** Date, time, and geographical point of pick-up for each participant trip. (3-30-07)~~

~~**iv.** Date, time, and geographical point of drop-off for each participant trip. (3-30-07)~~

~~**v.** Identification of the vehicle(s) and driver(s) transporting each participant on each trip, and total miles for the trip. (3-30-07)~~

~~**e.** Verify that all staff having contact with participants have complied with IDAPA 16.05.06, "Criminal History and Background Checks." (3-30-07)~~

~~**02. Non-Commercial Transportation Providers.** Each non-commercial transportation provider must, at minimum, meet the following standards: (3-30-07)~~

~~**a.** Continuously maintain liability insurance that covers passengers. For agency providers, coverage must be at least one hundred thousand (\$100,000) per individual and three hundred thousand (\$300,000) each incident. Individual providers must carry at least the minimum liability insurance required by Idaho law. If an agency permits employees to transport participants in employees' personal vehicles, the agency must ensure that adequate insurance coverage is carried to cover those circumstances. (3-30-07)~~



- ~~**b.** Obtain and maintain all licenses and certifications required by government to conduct business and to operate the types of vehicles used to transport participants. Agencies must maintain documentation of appropriate licensure for all employees who operate vehicles. (3-30-07)~~
- ~~**c.** Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used. (3-30-07)~~
- ~~**d.** Enter into a Medicaid enrollment application and provider agreement. (3-30-07)~~
- ~~**e.** Records. Each non-commercial transportation provider must, at the time of transport, collect the following information, and must maintain it for a minimum of five (5) years: (3-30-07)~~
- ~~**i.** Participant name and Medicaid ID number for each trip. (3-30-07)~~
- ~~**ii.** Date, time, geographical point of pick-up and odometer reading at pick-up for each participant trip. (3-30-07)~~
- ~~**iii.** Date, time, geographical point of drop-off and odometer reading at drop-off for each participant trip. (3-30-07)~~
- ~~**iv.** Mileage each participant was transported for each trip billed. (3-30-07)~~
- ~~**v.** Identification of the vehicle and driver transporting each participant on each trip. (3-30-07)~~
- ~~**vi.** Notice of prior authorization, when required. (3-30-07)~~

~~**875. NON EMERGENCY TRANSPORTATION SERVICES: PROVIDER REIMBURSEMENT.**~~

~~**01. Submission of Transportation Claims.** All transportation claims must be on a CMS 1500 Claim form and must include a trip-related authorization number where prior authorization is required. Payment must not be made in advance of the service being rendered. (3-30-07)~~

~~**02. Claims for Travel-Related Services.** All claims for travel-related services must be supported by receipts, or other verification of the date, place, the amount of and the nature of services that were performed. Medicaid will not pay for claimed services that are not verifiable by contemporaneous documentation. (3-30-07)~~

~~**a.** Travel covered by the service to which the participant is being transported is not reimbursable as a separate service; and (3-30-07)~~

~~**b.** Transportation is paid on a reimbursement basis only; payment will not be issued prior to delivery of the service. (3-30-07)~~

~~e.~~ *The reasonable cost of meals actually incurred in transit will be approved when necessary, when there is no other practical means of obtaining food, and only when an overnight stay is required to receive the service. Reimbursement must not exceed seven dollars (\$7) per meal or a maximum of twenty-one dollars (\$21) per day per person.* (3-30-07)

~~d.~~ *The reasonable cost actually incurred for lodging will be approved when the round trip and the needed medical service, in practicality, can not be completed in the same day. The travel must entail a one (1) way distance of at least two hundred (200) miles, or a normal one (1) way travel time of at least four (4) hours. The incidental travel expenses of a family member or other companion will be covered when medical necessity or the vulnerability of the individual requires accompaniment for safety, and no less costly alternative is available. Lodging reimbursement will not be paid when the stay is in the home of a relative or acquaintance.* (3-30-07)

~~03. Commercial Transportation.~~ *A statewide uniform payment rate must be established through a study conducted no less frequently than each third year, that evaluates the actual charges of, and costs reasonably incurred by the typical commercial transportation provider, together with the reasonable administrative costs incurred by the typical provider in keeping records for Medicaid-related transportation and billing the Department.* (3-30-07)

~~04. Non-Commercial Providers—Agency and Individual.~~ (3-30-07)

~~a.~~ *Agency Provider Reimbursement. A statewide uniform payment rate must be established through a study conducted no less frequently than each third year, that evaluates the actual costs reasonably incurred by the typical agency transportation provider, together with the reasonable administrative costs incurred by the typical agency transportation provider in keeping records for Medicaid-related transportation and billing the Department.* (3-30-07)

~~b.~~ *Individual Provider Reimbursement. A uniform payment rate must be established through a study conducted no less frequently than each third year, that evaluates the actual costs of fuel reasonably incurred by the typical non-commercial transportation provider whose personal vehicle averages fifteen (15) miles per gallon.* (3-30-07)

~~8763.~~ -- 879. (RESERVED).

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1003

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, Idaho Code; also House Bills 656 and 708 passed by the 2010 legislature; the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Section 1001(d); and 42 CFR Part 455, Subpart D.

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

**The pending rule is being adopted as proposed. These rule changes implement legislative intent language in H0656 and H0708 passed by the 2010 Legislature. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 176 through 190.](#)**

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

**Changes related to the pharmacy cost survey (H0708, 2010) will result in a cost reduction of \$1.67 million to the state general fund. The total cost reduction for both state and federal funds is \$8 million. This cost reduction has already been incorporated into the Division of Medicaid's 2011 appropriation. There is no anticipated fiscal impact to the state general fund related to the other changes being made in this docket.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lourie Neal at (208) 287-1162.

DATED this 24th day of November, 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  
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**THIS NOTICE PUBLISHED WITH THE 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 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; also House Bills 656 and 708 passed by the 2010 legislature; the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (also known as the Medicare Modernization Act), Section 1001(d); and 42 CFR Part 455, Subpart D.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 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:

**Rules changes are being made in these rules to implement the legislative intent in House Bills 656 and 708 passed by the 2010 legislature, as well as the Medicare Modernization Act, Section 1001(d). Rule changes for this docket include:**

- 1. Change in definition for Medicaid Inpatient Cost Limits to clarify the “beginning of the principal year” (H0656);**
- 2. Revision of reporting requirements for DSH (Section 1001(d));**
- 3. Clarification to the definition of “uninsured patient costs” in DSH requirements (Section 1001(d)); and**
- 4. Pharmacy cost survey (H0708).**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code:

**The Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs.**

**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.

**Changes related to the pharmacy cost survey will result in a cost reduction of \$1.67 million to the state general funds. The total cost reduction for both state and federal funds is \$8 million. There is no anticipated fiscal impact to the state general fund related to the other changes being made in this docket.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are to implement the legislative intent in H0656 and H0708 passed by the 2010 legislature, and to implement Section 1001(d) of the Medicare Modernization Act.

**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 Lourie Neal at (208) 287-1162.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 17th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1003***

**400. INPATIENT HOSPITAL SERVICES - DEFINITIONS.**

**01. Administratively Necessary Day (AND).** An Administratively Necessary Day (AND) is intended to allow a hospital time for an orderly transfer or discharge of participant inpatients who are no longer in need of a continued acute level of care. ANDs may be authorized for inpatients who are awaiting placement for nursing facility level of care, or in-home services which are not available, or when catastrophic events prevent the scheduled discharge of an inpatient. (3-30-07)

**02. Allowable Costs.** The current year's Medicaid apportionment of a hospital's allowable costs determined at final or interim settlement consist of those costs permitted by the principles of reimbursement contained in the Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (3-30-07)

**03. Apportioned Costs.** Apportioned costs consist of the share of a hospital's total allowable costs attributed to Medicaid program participants and other patients so that the share borne by the program is based upon actual services received by program participants, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in the PRM and in compliance with Medicaid reimbursement rules. (3-30-07)

**04. Capital Costs.** For the purposes of hospital reimbursement, capital costs are those allowable costs considered in the settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (3-30-07)

**05. Case-Mix Index.** The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the current year will be divided by the index of the principal year to assess the percent change between the years. (3-30-07)

**06. Charity Care.** Charity care is care provided to individuals who have no source of payment, third-party or personal resources. (3-30-07)

**07. Children's Hospital.** A Medicare-certified hospital as set forth in 42 CFR Section 412.23(d). (3-30-07)

**08. Critical Access Hospitals (CAH).** A rural hospital with twenty five (25) or less beds as set forth in 42 CFR Section 485.620. ( )

**089. Current Year.** Any hospital cost reporting period for which reasonable cost is being determined will be termed the current year. (3-30-07)

**0910. Customary Hospital Charges.** Customary hospital charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Department. No more than ninety-one and seven-tenths percent (91.7%) of covered charges will be reimbursed for the separate operating costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 405.03.b. of these rules. (3-29-10)

**101. Disproportionate Share Hospital (DSH) Allotment Amount.** The DSH allotment amount determined by CMS that is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (3-30-07)

**112. Disproportionate Share Hospital (DSH) Survey.** The DSH survey is an annual data request from the Department to the hospitals to obtain the information necessary to compute DSH in accordance with Subsection 405.09.a. of these rules. (3-30-07)

**123. Disproportionate Share Threshold.** The disproportionate share threshold is:

(3-30-07)

a. The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (3-30-07)

b. A Low Income Revenue Rate exceeding twenty-five percent (25%). (3-30-07)

**134. Excluded Units.** Excluded units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (3-30-07)

**145. Hospital Inflation Index.** An index calculated through Department studies and used to adjust inpatient operating cost limits and interim rates for the current year. (3-30-07)

**156. Low Income Revenue Rate.** The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (3-30-07)

a. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (3-30-07)

b. The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care must not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (3-30-07)

**167. Medicaid Inpatient Day.** For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (3-30-07)

**178. Medicaid Utilization Rate (MUR).** The MUR for each hospital will be computed using the Department's record of paid inpatient days for the fiscal year divided by the total inpatient days for the same fiscal year as reported in the DSH survey. In this paragraph, the term "inpatient days" includes ~~Medicaid swing bed days~~, administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of care, and Medicaid inpatient days from other states. In this paragraph, "Medicaid inpatient days" includes paid days not counted in prior DSH threshold computations. ~~(3-30-07)~~( )

**189. Obstetricians.** For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (3-30-07)

**1920. On-Site.** A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose relation to budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location must be in close proximity to the hospital where it is based, and both facilities serve the same patient population (e.g. from the same area, or catchment, within Medicare's defined Metropolitan Statistical Area (MSA) for urban hospitals or thirty-five (35) miles from a rural hospital).

(3-30-07)

**201. Operating Costs.** For the purposes of hospital reimbursement, operating costs are the allowable costs included in the cost centers established in the finalized Medicare cost report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process.

(3-30-07)

**212. Other Allowable Costs.** Other allowable costs are those reasonable costs recognized under the Medicaid reasonable cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as operating costs, but recognized by Medicare principles as allowable costs will be included in the total reasonable costs. Other allowable costs include, but are not necessarily limited to, physician's component which was combined-billed, capital costs, ambulance costs, excess costs, carry-forwards and medical education costs.

(3-30-07)

**223. Principal Year.** The principal year is the period from which the Medicaid Inpatient Operating Cost Limit is derived.

(3-30-07)

**a.** For inpatient services rendered on or after November 1, 2002, the principal year is the provider's fiscal year ending in calendar year 1998 in which a finalized Medicare cost report or its equivalent is prepared for Medicaid cost settlement.

(3-30-07)

**b.** For inpatient services rendered on or after January 1, 2007, the principal year is the provider's fiscal year ending in calendar year 2003 ~~and every subsequent fiscal year end in which a finalized Medicare cost report, or its equivalent, is prepared for Medicaid cost settlement.~~

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

**c.** For inpatient services on or after July 1, 2010, the principal year will be the Medicare cost report period used to prepare the Medicaid cost settlement.

( )

**234. Public Hospital.** For purposes of Subsection 405.03.b. of these rules, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality.

(3-30-07)

**245. Reasonable Costs.** Except as otherwise provided in Section 405.03 of these rules, reasonable costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Medicaid cost limit.

(3-30-07)

**256. Reimbursement Floor Percentage.** The floor calculation for hospitals with more



than forty (40) beds is seventy-seven and four-tenths percent (77.4%) of Medicaid costs, and the floor calculation for hospitals with forty (40) or fewer beds is ninety-one and seven-tenths percent (91.7%). (3-29-10)

**267. TEFRA.** TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (3-30-07)

**278. Uninsured Patient Costs.** For the purposes of determining the additional costs beyond uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment Amount, only inpatient costs of uninsured patients will be considered. ~~An inpatient with insurance but no covered benefit for the particular medically necessary service, procedure or treatment provided is an uninsured patient.~~ (3-30-07)( )

**289. Upper Payment Limit.** The Upper Payment Limit for hospital services is defined in the Code of Federal Regulations. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**405. INPATIENT HOSPITAL SERVICES - PROVIDER REIMBURSEMENT.**

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

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

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

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

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

(3-30-07)

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

ii. Each routine cost center's total Medicaid routine service costs plus the assigned share of Medicaid inpatient ancillary costs of the principal year will be divided by the related Medicaid patient days to identify the total costs per diem in the principal year. (3-30-07)

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

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

iii. Each routine cost center's cost per diem for the principal year will be multiplied by the Hospital Inflation Index for each subsequent fiscal year. (3-30-07)

iv. The sum of the per diem cost limits for the Medicaid inpatient routine service cost centers of a hospital during the principal year, as adjusted by the Hospital Inflation Index, will be the Medicaid cost limit for operating costs in the current year. (3-30-07)

(1) At the date of final settlement, reimbursement of the Medicaid current year inpatient routine cost centers plus the assigned ancillary costs will be limited to the total per diem operating costs as adjusted for each subsequent fiscal year after the principal year through the current year by the Hospital Inflation Cost Index. (3-30-07)

(2) Providers will be notified of the estimated inflation index periodically or Hospital Inflation Index (CMS Market Basket Index) prior to final settlement only upon written request. (3-30-07)

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

**a. Adjustments. Because of Extraordinary Circumstances.** Where a provider's costs exceed the Medicaid limit due to extraordinary circumstances beyond the control of the provider, the provider can request an adjustment to the cost limit to the extent the provider proves such higher costs result from the extraordinary circumstances including, but not limited to, increased

costs attributable to strikes, fires, earthquake, flood, or similar, unusual occurrences with substantial cost effects. (3-30-07)

**b.** Reimbursement to Public Hospitals. A Public Hospital that provides services free or at a nominal charge, which is less than, or equal to fifty percent (50%) of its total allowable costs, will be reimbursed at the same rate that would be used if the hospital's charges were equal to, or greater than, its costs. (3-30-07)

**c.** Adjustment to Cost Limits. A hospital is entitled to a reasonable increase in its Medicaid Cost limits if the hospital shows that its per diem costs of providing services have increased due to increases in case-mix, the adoption of new or changed services, the discontinuation of services or decrease in average length of stay for Medicaid inpatients since the principal year. Any hospital making such showing is entitled to an increase commensurate with the increase in per diem costs. (3-30-07)

**i.** The Medicaid operating cost limit may be adjusted by multiplying cost limit by the ratio of the current year's Case-Mix Index divided by the principal year's Case-Mix Index. (3-30-07)

**ii.** The contested case procedure set for forth in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," is available to larger hospitals seeking such adjustments to their Medicaid Cost Limits. (3-30-07)

~~**d.** *Medicaid Operating and Capital and Medical Education Costs. All hospitals will be guaranteed at least eighty percent (80%) of their total allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. (3-30-07)*~~

~~**i.** *With the exception of Subsection 405.03.d.ii. of this rule, at the time of final settlement, the allowable Medicaid costs related to each hospital's fiscal year end will be according to the Reimbursement Floor Percentage. (3-30-07)*~~

~~**ii.** *In the event that CMS informs the Department that total hospital payments under the Inpatient Operating Cost Limits exceed the inpatient Upper Payment Limit, the Department may reduce the guaranteed percentage defined as the Reimbursement Floor Percentage to hospitals. (3-30-07)*~~

**ed.** Adjustment to the Proration of Ancillary Costs in the principal year. Where the provider asserts that the proration of ancillary costs does not adequately reflect the total Medicaid cost per diem calculated for the inpatient routine service cost centers in the principal year, the provider may submit a detailed analysis of ancillary services provided to each participant for each type of patient day during each participant's stay during the principal year. The provider will be granted this adjustment only once upon appeal for the first cost reporting year that the limits are in effect. (3-30-07)

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

**a.** The participant's admission and length of stay is subject to preadmission,

concurrent and retrospective review by a Quality Improvement Organization (QIO) designated by the Department. QIO review will be governed by provisions of the QIO Idaho Medicaid Provider Manual as amended. If such review identifies that an admission or continued stay is not medically necessary, then no Medicaid payment will be made. Failure to obtain a timely QIO review as required by Section 405 of this chapter of rules, and as outlined in the QIO Idaho Medicaid Provider Manual as amended, will result in the QIO conducting a late review. After a QIO review has determined that the hospital stay was medically necessary, Medicaid will assess a late review penalty to the hospital as outlined in Subsection 405.05 of this rule. (3-30-07)

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

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

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

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

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

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

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

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

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

e. A request for a preadmission and/or continued stay QIO review that is five (5)

days late or greater will result in a penalty of one thousand three hundred dollars (\$1,300), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**06. AND Reimbursement Rate.** Reimbursement for an AND will be made at the weighted average Medicaid payment rate for all Idaho nursing facilities for routine services, as defined per 42 CFR 447.280(a)(1), furnished during the previous calendar year. ICF/ID rates are excluded from this calculation. (3-30-07)

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

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

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

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

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

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

**i.** The Department's Licensure and Certification Section finds the hospital in conformance with the requirements of 42 CFR 482.66 "Special Requirements" for hospital providers of long-term care services ("swingbeds"); and (3-30-07)

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

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

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

**v.** The hospital must be licensed for less than one hundred (100) beds as defined by 42 CFR 482.66(a)(1) for swing-bed purposes; and (3-30-07)

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

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

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

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

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

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

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

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

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

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

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

vii. The number of swing-bed days that may be reimbursed to a provider in a twelve (12) month period will be limited to the greater of one thousand ninety five (1,095) days which may be prorated over a shorter fiscal period or, fifteen percent (15%) of the product of the average number of available licensed beds in the hospital in the period and the number of days in the fiscal period. (3-30-07)

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

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

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

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

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

**ii.** Have at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services. (3-29-10)

**(1)** Subsection 405.09.b.ii. of this rule does not apply to a hospital in which the inpatients are predominantly individuals under eighteen (18) years of age; or (3-30-07)

**(2)** Does not offer nonemergency inpatient obstetric services as of December 21, 1987. (3-30-07)

**iii.** The MUR will not be less than one percent (1%). (3-30-07)

**iv.** If an Idaho hospital exceeds both disproportionate share thresholds, as described in Subsection 400.13 of these rules, and the criteria of Subsections 405.09.b.ii. and 405.09.b.iii. of this rule are met, the payment adjustment will be the greater of the amounts calculated using the methods identified in Subsections 405.09.b.vi. through 405.09.b.x. of this rule. (3-29-10)

**v.** Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one (1) standard deviation and less than one and one-half (1 1/2) standard deviations above the mean of all Idaho hospitals will receive a DSH payment equal to two percent (2%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

vi. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one and one-half (1 1/2) standard deviations and less than two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

vii. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates exceeding two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

viii. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to or exceeding twenty-five percent (25%) will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

ix. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to, or exceeding, thirty percent (30%) will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

**c.** Deemed Disproportionate Share Hospital (DSH). All hospitals in Idaho which have inpatient utilization rates of at least one percent (1%) only in Idaho inpatient days, and meet the requirements unrelated to patient day utilization specified in Subsection 405.09.b. of this rule, will be designated a Deemed Disproportionate Share Hospital. The disproportionate share payment to a Deemed DSH hospital will be the greater of: (3-29-10)

i. Five dollars (\$5) per Idaho Medicaid inpatient day included in the hospital's MUR computation; or (3-30-07)

ii. An amount per Medicaid inpatient day used in the hospital's MUR computation that equals the DSH allotment amount, less the Mandatory DSH payment amount, divided by the number of Medicaid inpatient days used in the MUR computation for all Idaho DSH hospitals. (3-30-07)

**d.** Insufficient DSH Allotment Amounts. When the DSH allotment amount is insufficient to make the aggregate amount of DSH payments to each DSH hospital, payments to each hospital will be reduced by the percentage by which the DSH allotment amount was exceeded. (3-30-07)

**e.** DSH Payments Will Not Exceed Costs. A DSH payment will not exceed the costs incurred during the year of furnishing services to individuals who are either eligible for medical assistance under the State Plan or were uninsured for health care services provided during the year. (3-30-07)

i. Payments made to a hospital for services provided to indigent patients by a state or a unit of local government within a state will not be considered a source of third party payment.



(3-30-07)

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

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

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

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

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

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

(1) Recover the overpayment from the provider; and ( )

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

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

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

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

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

ii. When less than fifty thousand dollars (\$50,000) of covered charges are billed to

the state by the provider, and a probable significant underpayment or overpayment is identifiable, and the amount makes it administratively economical and efficient for cost settlement to be requested by either the provider or the state, a cost settlement will be made between the hospital and the Department. (3-30-07)

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

**11. Institutions for Mental Disease (IMD).** Except for individuals under twenty-two (22) years of age which are contracted with the Department under the authority of the Division of Family and Community Services and certified by the Health Care Financing Administration, no services related to inpatient care will be covered when admitted to a freestanding psychiatric hospital. (3-30-07)

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

**13. Adequacy of Cost Information.** Cost information as developed by the provider must be current, accurate, and in sufficient detail and in such form as needed to support payments made for services rendered to participants. This includes all ledgers, books, reports, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.), which pertain to the determination of reasonable costs, leaving an audit trail capable of being audited. Financial and statistical records will be maintained in a consistent manner from one (1) settlement period to another. (3-30-07)

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

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

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

**b.** Hard Copy of Cost Report. Hospitals which request to undergo interim cost settlement with Idaho Medicaid must submit a hard copy of the Medicare cost report to the

Department upon filing with the Intermediary. (3-30-07)

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

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

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

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

**17. Nonappealable Items.** The formula for the determination of the Hospital Inflation Index, the principles of reimbursement which define allowable cost, non-Medicaid program issues, interim rates which are in compliance with state and federal rules, and the preliminary adjustments prior to final cost settlement determinations as supported by properly completed cost reports and audits must not be accepted as appealable items. (3-30-07)

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

**a.** Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Medicaid Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage. (3-30-07)

**b.** Retrospective Adjustments. Interim rates will not be adjusted retrospectively upon

request for rate review by the provider. (3-30-07)

**c.** Basis for Adjustments. The Department may make an adjustment based on the Medicare cost report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars (\$100,000), the interim rate will be adjusted to account for half (½) of the difference. (3-30-07)

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

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

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

**a.** Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Medicaid Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage. (3-30-07)

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

**c.** Basis for Adjustments. The Department may make an adjustment based on the Medicare cost report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars (\$100,000), the interim rate will be adjusted to account for half (½) of the difference. (3-30-07)

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**665. PRESCRIPTION DRUGS: PROVIDER REIMBURSEMENT.**

**01. Nonpayment of Prescriptions.** Prescriptions not filled in accordance with the provisions of Subsection 664.02 of these rules will be subject to nonpayment or recoupment. (3-30-07)

**02. Payment Procedures.** The following protocol must be followed for proper reimbursement. (3-30-07)

**a. Filing Claims.** Pharmacists must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. Upon request, the contractor will provide pharmacies with a supply of claim forms. The form must include information described in the pharmacy guidelines issued by the Department. (3-30-07)

**b. Claim Form Review.** Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant. (3-30-07)

**c. Billed Charges.** A pharmacy's billed charges are not to exceed the usual and customary charges defined as the lowest charge by the provider to the general public for the same service including advertised specials. (3-30-07)

**d. Reimbursement.** Reimbursement to pharmacies is limited to the lowest of the following: (3-30-07)

i. Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the dispensing fee assigned by the Department; (3-30-07)

ii. State Maximum Allowable Cost (SMAC), as established by the Department, plus the assigned dispensing fee; (3-30-07)

iii. Estimated Acquisition Cost (EAC), as established by the Department following negotiations with representatives of the Idaho pharmacy profession defined as an approximation of the net cost of the drug ~~and a reasonable operating margin~~, plus the assigned dispensing fee; or ~~(3-30-07)~~( )

iv. The pharmacy's usual and customary charge to the general public as defined in Subsection 665.02.c. of this rule. (3-30-07)

**e. Dispensing Fees.** Only one (1) dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: (3-30-07)

i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (3-30-07)

ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity,

as determined by the Department, is dispensed at each filling; (3-30-07)

iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (3-30-07)

iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (3-30-07)

f. Remittance Advice. Claims are processed by computer, and payments are made directly to the pharmacy or its designated bank through electronic claims transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. (3-30-07)

g. Return of Drugs. Drugs dispensed in unit dose packaging as defined by IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," Subsection 156.05, must be returned to the dispensing pharmacy when the participant no longer uses the medication as follows:(3-30-07)

i. A pharmacy provider using unit dose packaging must comply with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," Subsection 156.05. (3-30-07)

ii. The pharmacy provider that receives the returned drugs must credit the Department the amount billed for the cost of the drug less the dispensing fee. (3-30-07)

iii. The pharmacy provider may receive a fee for acceptance of returned unused drugs. The value of the unused drug being returned must be cost effective as determined by the Department. (3-30-07)

**03. Periodic State Cost Surveys.** The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid program are required to participate in these periodic state cost surveys by disclosing the costs of all drugs net of any special discounts or allowances. ( )

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1001

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-203, 56-250 through 56-257, Idaho Code, and 42 CFR 441.303(e).

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

**In order to safeguard the provision of services under the HCBS waiver programs, this rule change aligns these rules with both federal regulations and the CMS-approved HCBS waiver requirements.**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [May 5, 2010, Idaho Administrative Bulletin, Vol. 10-5, pages 33 and 34.](#)**

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

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

DATED this 1st day of October, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

P.O. Box 83720  
Boise, ID 83720-0036

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

**EFFECTIVE DATE:** The effective date of the temporary rule is **January 1, 2010**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code, and 42 CFR 441.303(e).

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

**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.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it is necessary to protect the public health, safety, or welfare.

**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: NA

**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 rule changes are being made to align the rules with federal regulations and requirements.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Susan Scheuerer at (208) 287-1156.



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 May 26, 2010.

DATED this 1st day of April, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1001**

**020. PARTICIPATION IN THE COST OF WAIVER SERVICES.**

**01. Waiver Services and Income Limit.** A participant is not required to participate in the cost of Home and Community Based (HCBS) waiver services unless: (3-19-07)

**a.** The participant's eligibility for medical assistance is based on approval for and receipt of a waiver service; and (3-19-07)

**b.** The participant's ~~income exceeds the eligibility requirement under the HCBS income limit contained in~~ is eligible for Medicaid if he meets the conditions referred to under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 787. (3-19-07)( )

**02. Waiver Cost-Sharing.** Participation in the cost of HCBS waiver services is determined as described in IDAPA 16.03.18, "Medicaid Cost-Sharing." (3-19-07)

# **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

## **16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1002**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. The effective date for these rules is July 1, 2011.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56- 202(b), 56-203(7), 56-203(9), 56-250 through 56-257, Idaho Code.

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

**In 2008, the Department began meeting with stakeholder groups to redesign developmental disabilities (DD) benefits for children. This project is known as the “Children’s System Redesign.” The Department will start a phased implementation of these redesigned benefits starting July 1, 2011. The major restructuring for the Children’s System Redesign provides the following: definitions, requirements for children’s DD programs, including the new services and provider qualifications.**

**In order to phase in these new benefits as seamlessly as possible, the Department will continue to operate the current children’s DD benefits concurrently with the redesigned children’s DD benefits. To accomplish this, the current requirements for developmental therapy, Intensive Behavioral Intervention (IBI), and other DDA services are being moved from IDAPA 16.04.11, “Developmental Disabilities Agencies (DDA),” to IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” in Sections 649 through 659 of this docket.**

**The Department has made many amendments throughout the proposed rule, based on the extensive public input received during the 21-day public comment period.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 197 through 262.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Lauren Ertz at (208) 287-1169.

DATED this 23rd day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56- 202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

<b>Wednesday, September 15, 2010 6:00 p.m. PDT</b>	<b>Wednesday, September 15, 2010 6:00 p.m. MDT</b>	<b>Wednesday, September 15, 2010 6:00 p.m. MDT</b>
<b>Dept. of Health &amp; Welfare-Reg. 1 1120 Ironwood Drive, Suite 102 Lower Level Large Conf. Rm. Coeur d'Alene, ID</b>	<b>Dept. of Health &amp; Welfare-Reg. 4 1720 Westgate Drive Suite A, Room 131 Boise, ID</b>	<b>Dept. Health &amp; Welfare-Reg. 7 150 Shoup Avenue 2nd Floor, Large Conf. Rm. Idaho Falls, ID</b>

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

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

In 2008, the Department began meeting with stakeholder groups to redesign developmental disabilities (DD) benefits for children. This project is known as the “Children’s System Redesign” and is sponsored by the Division of Medicaid and the Division of Family and Community Services. The Department is proposing a phased implementation of these redesigned benefits starting July 1, 2011. Implementation requirements are provided in Section 523 of this proposed docket.

In order to phase in these new benefits as seamlessly as possible, the Department is

proposing that we continue to operate the current children's DD benefits concurrently with the redesigned children's DD benefits. To accomplish this we are proposing that the current requirements for developmental therapy, Intensive Behavioral Intervention (IBI), and other DDA services be moved from IDAPA 16.04.11, "Developmental Disabilities Agencies," to IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," in Sections 649 through 659 of this proposed docket.

The major restructuring for the Children's System Redesign provides the following: definitions, requirements for children's DD programs, including the new services and provider qualifications.

**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 is cost-neutral.

Individualized budgets and limitations are being proposed for participants, using historical costs of developmental disabilities agency (DDA) services for children, to ensure the redesign of benefits remains cost-neutral. In addition, improved efficiencies of the redesign will safeguard against increasing program costs. Improvements include the addition of independent assessors and case managers to eliminate conflict of interest, and the creation of an array of outcome-based services and supports that align with varying health needs.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday, July 14, 2010.

The notice for this negotiated rulemaking published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, p. 26.](#)

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lauren Ertz at (208) 287-1169.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 17th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1002**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance With Department Criminal History Check.** Agencies must verify that individuals working in the area listed in Section 009.04 of these rules whom are employed or whom they contract have complied with the provisions in IDAPA 16.05.06, “Rules Governing Mandatory Criminal History Checks.” (3-19-07)

~~**02. Availability to Work or Provide Service.** (3-19-07)~~

~~**a.** The employer, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant record. (3-19-07)~~

~~**b.** Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (3-19-07)~~

**032. Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the agency to the Department when the agency learns of the conviction. (3-19-07)

**043. Providers Subject to Criminal History and Background Check Requirements.** The following providers are required to have a criminal history and background check: (3-19-07)

**a.** Adult Day Care Providers. The criminal history and background check requirements applicable to providers of adult day care as provided in Sections 329 and 705 of these rules. (4-2-08)

**b.** Adult Residential Care Providers. The criminal history and background check requirements applicable to adult residential care providers as provided in Section 329 of these rules. (4-2-08)

**c.** Attendant Care Providers. The criminal history and background check requirements applicable to attendant care providers as provided in Section 329 of these rules. (4-2-08)

**d.** Behavior Consultation or Crisis Management Providers. The criminal history and background check requirements applicable to behavior consultation or crisis management

providers as provided in Sections 329 and 705 of these rules. (4-2-08)

**e.** Certified Family Home Providers and All Adults in the Home. The criminal history and background check requirements applicable to certified family homes are found in Sections 305, 329 and 705 of these rules, and as provided in IDAPA 16.03.19, “Rules Governing Certified Family Homes.” (4-2-08)

**f.** Chore Services Providers. The criminal history and background check requirements applicable to chore services providers as provided in Sections 329 and 705 of these rules. (4-2-08)

**g.** Crisis Intervention Providers. The criminal history and background check requirements applicable to crisis intervention providers as provided in Section 685 of these rules. ( )

**gh.** Companion Services Providers. The criminal history and background check requirements applicable to companion services providers as provided in Section 329 of these rules. (4-2-08)

**hi.** Day Rehabilitation Providers. The criminal history and background check requirements applicable to day rehabilitation providers as provided in Section 329 of these rules. (4-2-08)

**ij.** Developmental Disabilities Agencies (DDA). The criminal history and background check for DDA and staff as provided in IDAPA 16.04~~3.12~~<sup>12</sup>, “~~Rules Governing~~ Developmental Disabilities Agencies (DDA),” Section 009. (3-19-07)( )

**jk.** Homemaker Services Providers. The criminal history and background check requirements applicable to homemaker services providers as provided in Section 329 of these rules. (4-2-08)

**kl.** Mental Health Clinics. The criminal history and background check requirements applicable to mental health clinic staff as provided in IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” Section 714. (3-19-07)

**lm.** Personal Assistance Agencies Acting As Fiscal Intermediaries. The criminal history and background check requirements applicable to the staff of personal assistance agencies acting as fiscal intermediaries as provided in Subsection 329.02 of these rules. (3-19-07)

**nn.** Personal Care Providers. The criminal history and background check requirements applicable to personal care providers as provided in Subsection 305.06 of these rules. (3-19-07)

**no.** Psychiatric Consultation Providers. The criminal history and background check requirements applicable to psychiatric consultation providers as provided in Section 329 of these rules. (4-2-08)

**op.** Psychosocial Rehabilitation Agencies. The criminal history and background check requirements applicable to psychosocial rehabilitation agency employees as provided in

Subsection 130.02 of these rules. (3-19-07)

**pg.** Residential Habilitation Providers. The criminal history and background check requirements applicable to residential habilitation providers as provided in Sections 329 and 705 of these rules, and IDAPA 16.04.17 “Rules Governing Residential Habilitation Agencies,” Sections 202 and 301. (4-2-08)

**qr.** Respite Care Providers. The criminal history and background check requirements applicable to respite care providers as provided in Sections 329, 665, and 705 of these rules. (~~4-2-08~~)(    )

**rs.** Service Coordinators and Paraprofessionals. The criminal history and background check requirements applicable to service coordinators and paraprofessionals working for an agency as provided in Section 729 of these rules. (3-19-07)

**st.** Supported Employment Providers. The criminal history and background check requirements applicable to supported employment providers as provided in Sections 329 and 705 of these rules. (4-2-08)

**u.** Therapeutic Consultant. The criminal history and background check requirements applicable to therapeutic consultation providers as provided in Section 685 of these rules. (    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**013. DEFINITIONS P THROUGH Z.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Patient Day.** For a nursing facility or an ICF/ID, a calendar day of care which will include the day of admission and exclude the day of discharge unless discharge occurs after 3:00 p.m. or it is the date of death, except that, when admission and discharge occur on the same day, one (1) day of care will be deemed to exist. (3-19-07)

**02. Participant.** A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-19-07)

**03. Patient.** The person undergoing treatment or receiving services from a provider. (3-19-07)

**04. Personal Assistance Agency.** An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal assistants working for them, and is the employer of record as well as the actual employer. (5-8-09)

**05. Personal Assistance Services (PAS).** Services that include both attendant care for participants under an HCBS waiver and personal care services for participants under the Medicaid

State Plan. PAS means services that involve personal and medically-oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or instrumental activities of daily living (IADLs). These services may include personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or participant. Services are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. (5-8-09)

**06. Physician.** A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a state or United States territory. (3-19-07)

**07. Physician's Assistant.** A person who meets all the applicable requirements to practice as licensed physician assistant under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants." (3-19-07)

**08. Picture Date.** A point in time when case mix indexes are calculated for every nursing facility based on the residents in the nursing facility on that day. The picture date to be used for rate setting will be the first day of the first month of a quarter. The picture date from that quarter will be used to establish the nursing facility's rate for the next quarter. (3-19-07)

**09. Plan of Care.** A written description of medical, remedial, or rehabilitative services to be provided to a participant, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (3-19-07)

**10. Private Rate.** Rate most frequently charged to private patients for a service or item. (3-19-07)

**11. PRM.** The Provider Reimbursement Manual. (3-19-07)

**12. Property.** The homestead and all personal and real property in which the participant has a legal interest. (3-19-07)

**13. Property Costs.** Property costs are the total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The Department may require and utilize an appraisal to establish which components are an integral part of property costs. (3-19-07)

**14. Property Rental Rate.** A rate paid per Medicaid patient day to free-standing nursing facilities and ICF/IDs in lieu of reimbursement for property costs other than property taxes, property insurance, and the property costs of major movable equipment at ICF/ID facilities. (3-19-07)

**15. Provider.** Any individual, partnership, association, corporation or organization, public or private, that furnishes medical goods or services in compliance with these rules and who has applied for and received a Medicaid provider number and has entered into a written provider agreement with the Department in accordance with IDAPA 16.03.09, "Medicaid Basic Plan



Benefits,” Section 205. (3-19-07)

**16. Provider Agreement.** An written agreement between the provider and the Department, in accordance with IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” Section 205. (3-19-07)

**17. Provider Reimbursement Manual (PRM).** The Providers Reimbursement Manual, a federal publication which specifies accounting treatments and standards for the Medicare program, CMS Publications 15-1 and 15-2, which are incorporated by reference in Section 004 of these rules. (3-19-07)

**18. Psychologist, Licensed.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners.” (3-19-07)

**19. Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners,” and who is registered with the Bureau of Occupational Licenses. (3-19-07)

**20. Public Provider.** A public provider is one operated by a federal, state, county, city, or other local government agency or instrumentality. (3-19-07)

**21. Raw Food.** Food used to meet the nutritional needs of the residents of a facility, including liquid dietary supplements, liquid thickeners, and tube feeding solutions. (3-19-07)

**22. Reasonable Property Insurance.** Reasonable property insurance means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm’s length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility’s fiscal year cannot be considered reasonable. (3-19-07)

**23. Recreational Therapy (Services).** Those activities or services that are generally perceived as recreation such as, but not limited to, fishing, hunting, camping, attendance or participation in sporting events or practices, attendance at concerts, fairs or rodeos, skiing, sightseeing, boating, bowling, swimming, *training for Special Olympics*, and special day parties (birthday, Christmas, etc.). (3-19-07)( )

~~**24. Regional Medicaid Services (RMS).** Regional offices of the Division of Medicaid. (3-19-07)~~

~~**254. Regional Nurse Reviewer (RNR).** A registered nurse who reviews and makes determinations on applications for entitlement to and continued participation in Title XIX and Title XXI long term care for the Department. (3-19-07)~~

~~**265. Registered Nurse - R.N.** Which in the state of Idaho is known as a Licensed Professional Nurse and who meets all the applicable requirements to practice as a licensed~~

professional nurse under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01 “Rules of the Idaho Board of Nursing.” (3-19-07)

**276. Related Entity.** An organization with which the provider is associated or affiliated to a significant extent, or has control of, or is controlled by, that furnishes services, facilities, or supplies for the provider. (3-19-07)

**287. Related to Provider.** The provider, to a significant extent, is associated or affiliated with, or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies. (3-19-07)

**298. Residential Care or Assisted Living Facility.** A facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three (3) or more adults not related to the owner. In this chapter, Residential Care or Assisted Living Facilities are referred to as “facility.” Distinct segments of a facility may be licensed separately, provided each segment functions independently and meets all applicable rules. (3-19-07)

**3029. Resource Utilization Groups (RUG).** A process of grouping residents according to the clinical and functional status identified by the responses to key elements of the MDS. The RUG Grouper is used for the purposes of rate setting and determining nursing facility level of care. (4-2-08)

**340. Skilled Nursing Care.** The level of care for patients requiring twenty-four (24) hour skilled nursing services. (3-19-07)

**321. Social Security Act.** 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons meeting certain criteria. (3-19-07)

**332. State Plan.** The contract between the state and federal government under 42 U.S.C. section 1396a(a). (3-19-07)

**343. Supervision.** Procedural guidance by a qualified person and initial direction and periodic inspection of the actual act, at the site of service delivery. (3-19-07)

**354. Title XVIII.** Title XVIII of the Social Security Act, known as Medicare, for the aged, blind, and disabled administered by the federal government. (3-19-07)

**365. 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. (3-19-07)

**376. Title XXI.** Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-19-07)

**387. Third Party.** Includes a person, institution, corporation, public or private agency

that is liable to pay all or part of the medical cost of injury, disease, or disability of a participant of medical assistance. (3-19-07)

**398. Transportation.** The physical movement of a participant to and from a medical appointment or service by the participant, another person, taxi or common carrier. (3-19-07)

**4039. Uniform Assessment.** A set of standardized criteria to assess functional and cognitive abilities. (3-19-07)

**410. Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities as described in IDAPA 16.03.23 “Rules Governing Uniform Assessments of State-Funded Clients.” (3-19-07)

**421. Utilities.** All expenses for heat, electricity, water and sewer. (3-19-07)

**432. Utilization Control (UC).** A program of prepayment screening and annual review by at least one (1) Regional Nurse Reviewer to determine the appropriateness of medical entitlement and the need for continued medical entitlement of applicants or participants to Title XIX and Title XXI benefits in a nursing facility. (3-19-07)

**443. Utilization Control Team (UCT).** A team of Regional Nurse Reviewers which conducts on-site reviews of the care and services in the nursing facilities approved by the Department as providers of care for eligible medical assistance participants. (3-19-07)

**454. Vocational Services.** Services or programs which are directly related to the preparation of individuals for paid or unpaid employment. The test of the vocational nature of the service is whether the services are provided with the expectation that the participant would be able to participate in a sheltered workshop or in the general work force within one (1) year. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**026. SELECTIVE CONTRACTING.**

The Department may contract with a limited number of providers of certain Medicaid products and services, ~~including: dental services, eyeglasses, transportation, and some medical supplies.~~ (3-19-07)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**503. DEVELOPMENTAL DISABILITY DETERMINATION: TEST INSTRUMENTS.**

A variety of standardized test instruments are available. Tests used to determine a developmental disability must reflect the current functional status of the individual being evaluated. Tests over

one (1) year old must be verified to reflect the current status of the individual by an appropriate professional. Instruments designed only for screening purposes must not be used to determine eligibility. (3-19-07)

**01. Test Instruments For Adults.** Unless contra-indicated, the following test instruments or subsequent revisions must be used to determine eligibility: (3-19-07)

- a. Cognitive: Wechsler Adult Intelligence Scale-Third Edition (WAIS-III). (3-19-07)
- b. Functional: Scales of Independent Behavior-Revised (SIB-R). (3-19-07)

**02. Test Instruments for Children.** The assessments utilized to determine eligibility must be based on age appropriate criteria. Evaluations must be performed by qualified personnel with experience and expertise with children; selected evaluation tools and practices should be age appropriate, based on consideration of the child's language and motor skills, ~~be racially and culturally non-discriminatory, and be conducted in settings that are typically comfortable and familiar to the child.~~ Unless contraindicated, the most recent version of the following test instruments ~~such as the following~~ must be used with children: (3-19-07)( )

- a. Cognitive: (3-19-07)
  - i. Bayley Scales of Infant Development, ~~Third Edition (BSID-III)~~ for ages birth through forty-two (42) months; (3-19-07)( )
  - ii. Stanford Binet Intelligence Scales, ~~Fifth Edition (SB5)~~ for ages two (2) years through adult; (3-19-07)( )
  - iii. Wechsler Preschool and Primary Scale of Intelligence, ~~Third Edition (WPPSI-III)~~ for ages two (2) years, six (6) months to seven (7) years, three (3) months; (3-19-07)( )
  - iv. Wechsler Intelligence Scale for Children, ~~Fourth Edition (WISC-IV)~~ for ages six (6) through sixteen (16) years, eleven (11) months; or (3-19-07)( )
  - v. Wechsler Adult Intelligence Scale, ~~Third Edition (WAIS-III)~~ for ages sixteen (16) years to adult. (3-19-07)( )
- b. Functional: (3-19-07)
  - i. ~~American Association on Mental Retardation Adaptive Behavior Scale: School (ABS-S) for ages three (3) through twenty-one (21) years;~~ (3-19-07)
  - ii. Battelle Developmental Inventory, 2nd Edition (BDI-2) for ages birth to ninety-five (95) months; (3-19-07)
  - iii. ~~Developmental Profile II (DP-II) for ages birth through twelve (12) years;~~ (3-19-07)
  - iv. Scales of Independent Behavior (SIB-R) for ages birth through adult; or

(3-19-07)( )

v. ~~Vineland Adaptive Behavior Scales (VABS) for ages birth to eighteen (18) years;  
eleven (11) months;~~ (3-19-07)

vii. Mullen Scales of Early Learning (MSEL) for ages birth to three (3) years; (3-19-07)( )

viii. ~~Preschool Language Scale—3 (PLS-3) for ages birth to three (3) years;~~ (3-19-07)

ix. ~~Peabody Developmental Motor Scales for ages birth to three (3) years; or~~ (3-19-07)

x. ~~Receptive-Expressive Emergent Language Scale—Third Edition (REEL-3) for  
ages birth to three (3) years.~~ (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**511. INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY - COVERAGE AND LIMITATIONS.**

The scope of these rules defines prior authorization for the following Medicaid behavioral health services for adults: (3-19-07)

**01. DD Waiver Services.** DD Waiver services as described in Sections 700 through 719 of these rules; and (3-29-10)

**02. Developmental Disability Agency Services.** Developmental Disability Agency services as described in Sections 65049 through 66059 of these rules and IDAPA 16.043.121, “Developmental Disabilities Agencies (DDA)”;  
and (3-19-07)( )

**03. Service Coordination.** Service Coordination for persons with developmental disabilities as described in Sections 720 through 779 of these rules. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

516. -- 5719. (RESERVED).

**SUB-PART: CHILDREN’S DEVELOPMENTAL DISABILITIES PRIOR  
AUTHORIZATION  
(SECTIONS 520 THROUGH 528)**

**520. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA).**

The purpose of the children's DD Prior Authorization is to ensure the provision of the right care, in the right place, at the right price, and with the right outcomes in order to enhance health and safety, and to promote participants' rights, self-determination, and independence. Prior authorization involves the assessment of the need for services, development of a budget, development of a plan of service, prior approval of services, and a quality improvement program. Services are reimbursable if they are identified on the authorized plan of service and are consistent with the purpose and rule for prior authorization as well as rules for the specific service. ( )

**521. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: DEFINITIONS.**

For the purposes of Sections 520 through 528 of these rules, the following terms are used as defined below. ( )

**01. Assessment.** A process that is described in Section 522 of these rules for program eligibility and in Section 526 of these rules for plan of service. ( )

**02. Baseline.** A participant's skill level prior to intervention written in measurable, behaviorally-stated terms. ( )

**03. Child.** A person who is under the age of eighteen (18) years. ( )

**04. Family.** The participant and his parent(s) or legal guardian. ( )

**05. Family-Centered Planning Process.** A process facilitated by the plan developer, by which the family-centered planning team collaborates with the participant to develop the plan of service. ( )

**06. Family-Centered Planning Team.** The group who develops the plan of service. This group includes, at a minimum, the child participant (unless otherwise determined by the family-centered planning team), the parent or legal guardian and the plan developer. The family-centered planning team may include others identified by the family or agreed upon by the family and the Department as important to the process. ( )

**07. ICF/ID.** Intermediate care facility for persons with intellectual disabilities. ( )

**08. Individualized Family Service Plan (IFSP).** An initial or annual plan of service, developed by the Department or its designee, for providing early intervention services to children birth to age three (3). This plan must meet the provisions of the Individuals with Disabilities Education Act (IDEA), Part C. The IFSP may serve as the plan of service if it meets all of the components of the plan of service. ( )

**09. Level of Support.** The amount of services and supports necessary to allow the individual to live independently and safely in the community. ( )

**10. Medical, Social, and Developmental Assessment Summary.** A form used by the

Department to gather a participant's medical, social and developmental history and other summary information. It is required for all participants receiving home and community-based services under a plan of service. The information is used in the assessment and authorization of a participant's services. ( )

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

**12. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. ( )

**13. Plan of Service.** An initial or annual plan that identifies all services and supports based on a family-centered planning process, and which is developed for providing DD services to children birth through seventeen (17) years of age. ( )

**14. Practitioner of the Healing Arts, Licensed.** A licensed physician, physician assistant, or nurse practitioner. ( )

**15. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by Sections 520 and 528 these rules. ( )

**16. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service, and demonstrates the continued need for the service. ( )

**17. Right Care.** Accepted treatment for defined diagnosis, functional needs and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. ( )

**18. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. ( )

**19. Right Price.** The most integrated and least expensive services that are sufficiently intensive to address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. ( )

**20. Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. ( )

**21. Services.** Evaluation, diagnostic, therapy, training, assistance, and support services that are provided to persons with developmental disabilities. ( )

**522. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: ELIGIBILITY DETERMINATION.**

The Department will make the final determination of a child's eligibility, based upon the

assessments administered by the Department. Initial and annual assessments must be performed by the Department or its contractor. The purpose of the eligibility assessment is to determine a participant's eligibility for developmental disabilities services in accordance with Section 66-402, Idaho Code, and Sections 500 through 506 of these rules, to determine a participant's eligibility for children's home and community-based state plan option services in accordance with Section 662 of these rules, and to determine a participant's eligibility for ICF/ID level of care for children's waiver services in accordance with Section 682 of these rules. ( )

**01. Initial Eligibility Assessment.** For new applicants, an assessment must be completed by the Department or its contractor within thirty (30) calendar days from the date a complete application is submitted. ( )

**02. Annual Eligibility Determination.** Eligibility determination must be completed annually for current participants. The assessor must reassess the participant, or establish and document that the existing assessments reflect the participant's current level of care needs. At least sixty (60) calendar days before the expiration of the current plan of service: ( )

**a.** The eligibility determination process must be completed to determine level of care needs; and ( )

**b.** The assessor must provide the results of the eligibility determination to the participant. ( )

**03. Determination of Developmental Disability Eligibility.** ( )

**a.** The assessments that are required and completed by the Department or its contractor for determining a participant's eligibility for developmental disabilities services must include: ( )

**i.** Medical, Social, and Developmental Assessment Summary; ( )

**ii.** A functional assessment which reflects the participant's current functioning. The Department or its contractor will administer a functional assessment for use in initial eligibility determination of developmental disability eligibility. Thereafter, a new functional assessment will be required if the assessor determines that additional documentation is necessary to determine the participant's level of care criteria. ( )

**b.** The Department or its contractor must obtain the following: ( )

**i.** A medical assessment which contains medical information that accurately reflects the current status of the participant or establishes categorical eligibility in accordance with Section 66-402(5)(a), Idaho Code; or ( )

**ii.** The results of psychometric testing if eligibility for developmental disabilities services is based on intellectual disability and there is no prior testing, or prior testing is inconclusive or invalid. Initial eligibility determinations also require documentation of diagnosis for participants whose eligibility is based on developmental disabilities other than intellectual disability. ( )



**04. ICF/ID Level of Care Determination for Waiver Services.** The Department or its contractor will determine ICF/ID level of care for children in accordance with Section 584 of these rules. ( )

**05. Determination for Children's Home and Community Based State Plan Option.** The Department or its contractor will determine *if* a child meets the established criteria necessary to receive children's home and community based state plan option services in accordance with Section 662 of these rules. ( )

**523. TRANSITION TO NEW CHILDREN'S DEVELOPMENTAL DISABILITY BENEFITS.**

**01. Phase-in Schedule.** To transition to the new benefits under Sections 520 through 528, Sections 660 through 666, and Sections 680 through 686 of these rules, a child will be phased in to the new benefits by order of his birthdate. ( )

**02. Notification.** During the phased-implementation, the Department will notify a family three (3) months prior to their child's birthdate. ( )

**03. New Applicants.** A new applicant entering the system will be enrolled in the new children's DD benefit programs. ( )

**04. Opportunity for Early Enrollment.** A family may opt to transition their child to the new benefits prior to their child's birthdate. The Department will accept application for a family *who* chooses to opt-in early, but transitioning a child at his scheduled transition date will be the Department's top priority. ( )

**05. Duplication of Services.** A child will not be able to receive both the new children's HCBS state plan option and children's waiver services listed in Section 660 through 666 and 680 through 688, at the same time he is receiving the old DDA services listed in Section 649 through 659. ( )

**524. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: COVERAGE AND LIMITATIONS.**

The scope of these rules defines prior authorization for the following Medicaid developmental disabilities services for children: ( )

**01. Children's Home and Community Based State Plan Option Services.** Children's home and community based state plan option services as described in Sections 660 through 666 of these rules; and ( )

**02. Children's DD Waiver Services.** Children's DD waiver services as described in Sections 680 through 686 of these rules. ( )

**525. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: PROCEDURAL REQUIREMENTS.**

Prior to the development of the plan of service, the plan developer will gather *and make referrals*

for the following information to guide the family-centered planning process: ( )

**01. Eligibility Determination Documentation.** Eligibility determination documentation completed by the Department or its contractor as defined in Subsection 522.03 of these rules. ( )

**02. History and Physical.** A current history and physical completed by a practitioner of the healing arts is required at least annually or more frequently as determined by the practitioner. For participants in Healthy Connections, the Healthy Connections physician must conduct the history and physical, and may refer the participant for other evaluations. ( )

**03. Discipline-Specific Assessments.** Participants must be referred for an occupational therapy, physical therapy, or speech-language pathology assessment when the participant has a targeted need in one of these disciplines. The assessment is used to guide the provision of services identified on the plan of service. ( )

**04. Additional Information.** Gather assessments and information related to the participant's medical conditions, risk of deterioration, living conditions, individual goals, and behavioral or psychiatric needs. ( )

**526. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: PLAN OF SERVICE PROCESS.**

In collaboration with the participant, the Department must ensure that the participant has one (1) plan of service. This plan of service is developed within the individualized participant budget referred to in Section 527 of these rules and must identify all services and supports. The participant and his parent or legal guardian may develop their own plan or use a paid or non-paid plan developer to assist with plan development. The plan of service must identify services and supports if available outside of Medicaid-funded services that can help the participant meet desired goals. ( )

**01. Plan Development and Monitoring.** Paid plan development and monitoring must be provided by the Department or its contractor. Non-paid plan development and monitoring may be provided by the family, or a person of their choosing, when this person is not a paid provider of services identified on the child's plan of service. ( )

**02. Plan of Service Development.** The plan of service must be developed with the parent or legal guardian, and the child participant (unless otherwise determined by the family-centered planning team). With the parent or legal guardian's consent, the family-centered planning team may include other family members or individuals who are significant to the participant. ( )

**a.** In developing the plan of service, the family-centered planning team must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. ( )

**b.** The plan of service must identify, at a minimum, the type of service to be delivered, goals to be addressed within the plan year, target dates, and methods for collaboration. ( )

**03. No Duplication of Services.** The plan developer must ensure that there is no duplication of services. ( )

**04. Plan Monitoring.** The family-centered planning team must identify the frequency of monitoring, which must be at least every six (6) months. The plan developer must meet face-to-face with the participant at least annually. Plan monitoring must include the following: ( )

**a.** Review of the plan of service with the parent or legal guardian to identify the current status of programs and changes if needed; ( )

**b.** Contact with service providers to identify barriers to service provision; ( )

**c.** Discuss with parent or legal guardian satisfaction regarding quality and quantity of services; an ( )

**d.** Review of provider status reviews. ( )

**05. Provider Status Reviews.** The service providers in Sections 664 and 684 of these rules must report to the plan monitor the participant's progress toward goals. The provider must complete a six (6) month and annual provider status review. The provider status review must be submitted to the plan monitor within forty-five (45) calendar days prior to the expiration of the existing plan of service. ( )

**06. Informed Consent.** The participant and his parent or legal guardian must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. ( )

**07. Provider Implementation Plan.** Providers of children's waiver services listed under Section 684 of these rules must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. ( )

**a.** The implementation plan must be completed within fourteen (14) calendar days after the initial provision of service, and revised whenever participant needs change. ( )

**b.** Documentation of implementation plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, and the signature of the person making the change complete with his title and the date signed. ( )

**08. Addendum to the Plan of Service.** A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of service requires a parent's or legal guardian's signature and may be subject to prior authorization by the Department. ( )

**09. Annual Reauthorization of Services.** A participant's plan of service must be reauthorized annually. The Department must review and authorize the new plan of service prior to the expiration of the current plan. ( )

**a. Annual Eligibility Determination Results.** An annual determination must be completed in accordance with Section 522 of these rules. ( )

**b. Plan Developer Responsibilities for Annual Reauthorization.** A new plan of service must be provided to the Department by the plan developer at least forty-five (45) calendar days prior to the expiration date of the current plan. Prior to this, the plan developer must: ( )

i. Notify the providers who appear on the plan of service of the annual review date. ( )

ii. Obtain a copy of the current annual provider status review from each provider for use by the family-centered planning team. Each provider status review must meet the requirements in Subsection 526.06 of these rules. ( )

iii. Convene the family-centered planning team to develop a new plan of service. ( )

**c. Evaluation and Prior Authorization of the Plan of Service.** The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 520 and 526 of these rules. ( )

**d. Adjustments to the Annual Budget and Services.** The annual budget and services may be adjusted based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. ( )

**e. Reapplication After a Lapse in Service.** For participants who are re-applying for service after at least a thirty (30) calendar day lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. ( )

**527. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION: PROVIDER REIMBURSEMENT.**

Providers are reimbursed on a fee-for-service basis for services identified on the participant's plan of service and within the participant's individualized budget. The Department will monitor the budget setting methodology on an ongoing basis to ensure that participant needs are accurately reflected in the methodology. ( )

**01. Individualized Budget Methodology.** The following five (5) categories are used when determining individualized budgets for children with developmental disabilities: ( )

**a. HCBS State Plan Option.** Children meeting developmental disabilities criteria. ( )

**b. Children's DD Waiver - Level I.** ( )

i. Children meeting ICF/ID level of care criteria who qualify based on functional limitations when their composite full scale functional age equivalency is less than fifty percent (50%) of their chronological age; or ( )

ii. Children who have an overall age equivalency up to fifty-three percent (53%) of their chronological age when combined with a General Maladaptive Index between minus seventeen (-17), and minus twenty-one (-21) inclusive. ( )

c. Children's DD Waiver - Level II. ( )

i. Children meeting ICF/ID level of care criteria who qualify based on functional limitations when their composite full scale functional age equivalency is less than fifty percent (50%) of their chronological age; and ( )

ii. Have an autism spectrum disorder diagnosis. ( )

d. Children's DD Waiver - Level III. Children meeting ICF/ID level of care criteria who qualify based on maladaptive behaviors when their General Maladaptive Index is minus twenty-two (-22) or less. ( )

e. Act Early Waiver. ( )

i. Children age three (3) through six (6) meeting ICF/ID level of care criteria who qualify based on maladaptive behaviors when their General Maladaptive Index is minus twenty-two (-22) or less, and their composite full scale functional age equivalency is less than fifty percent (50%) of their chronological age; or ( )

ii. Children age three (3) through six (6) meeting ICF/ID level of care criteria who have an autism spectrum disorder diagnosis. ( )

**02. Participant Notification of Budget Amount.** The Department notifies each participant of his set budget amount as part of the eligibility determination process. The notification will include how the participant may appeal the set budget amount. ( )

**03. Annual Re-Evaluation.** Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget. ( )

**528. CHILDREN'S DEVELOPMENTAL DISABILITIES PRIOR AUTHORIZATION: DEPARTMENT'S QUALITY ASSURANCE AND IMPROVEMENT PROCESSES.**

**01. Quality Assurance.** Quality Assurance consists of audits and reviews to ensure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) calendar days after the results are received. The Department may terminate authorization of service or the provider agreement for providers who do not comply with the corrective action plan. If the Department finds a provider's deficiency or deficiencies immediately jeopardize the

health or safety of its participants, the Department may immediately terminate the provider agreement. ( )

**02. Quality Improvement.** The Department may gather and utilize information from participants and providers to evaluate customer satisfaction, participant satisfaction, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings lead to quality improvement activities to improve provider processes and outcomes for participants. ( )

**03. Plan of Service Review.** The Department will obtain the necessary information to determine that participants continue to meet eligibility criteria, services continue to be clinically necessary, services continue to be the choice of the participant, and services constitute appropriate care to warrant continued authorization or need for the service. ( )

**529. -- 579. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**634. -- 647. (RESERVED).**

**648. INTRODUCTION TO DEVELOPMENTAL DISABILITIES AGENCIES SECTION.**

Sections 649 through 659 of these rules include the requirements for developmental disabilities agencies delivering services to children and adults. The benefit requirements for developmental therapy, Intensive Behavioral Intervention (IBI), and other DDA services were moved from IDAPA 16.04.11, "Developmental Disabilities Agencies (DDA)," to this section of rules. IDAPA 16.04.11, "Developmental Disabilities Agencies (DDA)," has been rewritten and renamed to: IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA). ( )

**01. Background of the Children's System Redesign.** ( )

**a.** In 2008, the Department began meeting with stakeholder groups to redesign developmental disabilities (DD) benefits for children. This project is known as the "Children's System Redesign." The Department will begin phased implementation of these redesigned benefits starting July 1, 2011. Implementation requirements are provided in Section 523 of these rules. ( )

**b.** In order to phase in these new benefits as seamlessly as possible, the Department will continue to operate the current children's DD benefits concurrently with the redesigned children's DD benefits. ( )

**i.** The current children's DD benefits are found under Sections 649 to 659 of these rules. ( )

**ii.** The redesigned children's DD benefits are found under Sections 520 through 528,

660 through 666, and 680 through 686 of these rules. ( )

02. **Developmental Disabilities Agency Services for Adults Age Eighteen and Older.** Current DDA services for adults have not been modified and are covered under Sections 649 to 659 of these rules. ( )

**65049. DEVELOPMENTAL DISABILITIES AGENCIES (DDA).**

Under 42 CFR 440.130(d), the Department will pay for rehabilitative services including medical or remedial services provided by facilities that have entered into a provider agreement with the Department and are certified as developmental disabilities agencies by the Department. Services provided by a developmental disabilities agency to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements. (3-19-07)

~~651. (RESERVED).~~

**6520. DEVELOPMENTAL DISABILITIES AGENCY (DDA) SERVICES: ELIGIBILITY.**

01. **DDA Services Eligibility.** Prior to receiving services in a DDA an individual must be determined to have a developmental disability under Sections 500 through 506 of these rules and Section 66-402, Idaho Code. (3-19-07)( )

02. **Intensive Behavioral Intervention (IBI) Service Eligibility.** IBI is available to children with developmental disabilities through the month of their twenty-first birthday, who have the following characteristics: ( )

a. **Self-injurious, aggressive, or severely maladaptive behavior as evidenced by a General Maladaptive Index score of minus twenty-two (-22) or below on the Scales of Independent Behavior - Revised (SIB-R) or other behavioral assessment indicators identified by the Department; and** ( )

b. **A severe deficit, defined as equivalent to fifty percent (50%) or less of chronological age, in at least one (1) of the following areas:** ( )

i. **Verbal and nonverbal communication as evidenced by the SIB-R Social Interaction & Communication Skills cluster score;** ( )

ii. **Social interaction as evidenced by the SIB-R Social Interaction subscale score; or** ( )

iii. **Leisure and play skills as evidenced by the SIB-R Home/Community Orientation subscale score.** ( )

**6531. DDA SERVICES: COVERAGE REQUIREMENTS AND LIMITATIONS.**

Developmental disabilities agency services must be recommended by a physician or other practitioner of the healing arts. The following therapy services are reimbursable when provided in accordance with these rules. ( )

**01. ~~Requirement for Plan of Service and Prior Authorization~~ Required DDA Services.** Each DDA is required to provide developmental therapy; in addition, each DDA must provide or make available the following services: psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy. Developmental therapy must be provided by qualified employees of the agency. Psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy must either be provided by qualified employees of the agency or through a formal written agreement. (3-19-07)( )

**a.** ~~All therapy services for children must be identified on the Individual Program Plan developed by the developmental disabilities agency (DDA) as described in IDAPA 16.04.11, "Developmental Disabilities Agencies."~~ **Sufficient Quantity and Quality.** All required services provided must be sufficient in quantity and quality to meet the needs of each person receiving services, and must be provided by qualified individuals in accordance with the requirements in Section 657 of these rules. (3-19-07)( )

**b.** ~~All therapy services for adults with developmental disabilities must be identified on the plan of service and prior authorized as described in Sections 507 through 520 of these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies."~~ **When a Required Service Is Not Available.** When a required service, other than developmental therapy, is not provided by the agency due to a documented shortage of available providers in a specific geographic area, the DDA must document its effort to secure the service or facilitate the referral for the needed service, including notifying the service coordinator, when the participant has one. (3-29-10)( )

**02. ~~Assessment and Diagnostic Services.~~** ~~Twelve (12) hours is the maximum Medicaid reimbursable time allowed for the combination of all assessment, evaluation or diagnostic services provided in any calendar year. Additional hours may be approved for a child through the month of his twenty-first birthday with approval from EPSDT staff in the Division of Medicaid. The following assessment and diagnostic services are reimbursable when provided in accordance with these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies":~~ **Requirements to Deliver Developmental Therapy.** Developmental therapy may be delivered in a developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy. Developmental therapy services must be delivered by Developmental Specialists or paraprofessionals qualified in accordance with these rules, based on a comprehensive developmental assessment completed prior to the delivery of developmental therapy. (3-19-07)( )

**a.** ~~Comprehensive Developmental Assessment;~~ **Areas of Service.** These services must be directed toward the rehabilitation or habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. (3-19-07)( )



~~b. Comprehensive Intensive Behavioral Intervention (IBI) Assessment. Before conducting the comprehensive IBI assessment, the DDA must receive prior authorization from the Department. The time required to complete this assessment is included in the thirty-six (36) month IBI limitation but does not count against the twelve (12) hour limitation described in this subsection;~~ Age-Appropriate. Developmental therapy includes instruction in daily living skills the participant has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy. Developmental therapy must be age-appropriate.

~~(3-19-07)( )~~

~~c. Occupational Therapy Assessment~~ Tutorial Activities and Educational Tasks are Excluded. Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the participant's disability.

~~(3-19-07)( )~~

~~d. Physical Therapy Assessment;~~ Settings for Developmental Therapy. Developmental therapy, in both individual and group formats, must be available in both community-based and home-based settings, and be based on participant needs, interests, or choices.

~~(3-19-07)( )~~

~~e. Speech and Language Assessment;~~ Staff-to-Participant Ratio. When group developmental therapy is center-based, there must be a minimum of one (1) qualified staff, who may be a paraprofessional or a Developmental Specialist, providing direct services for every twelve (12) participants. Additional staff must be added, as necessary, to meet the needs of each individual served.

~~(3-19-07)( )~~

~~f. Medical/Social History; and~~

~~(3-19-07)~~

~~g. Psychological Assessment. Includes psychological testing and psychiatric diagnostic interview.~~

~~(3-19-07)~~

**03. Psychotherapy Services.** ~~Developmental disabilities agency services must be recommended by a physician or other practitioner of the healing arts and provided in accordance with objectives as specified in IDAPA 16.04.11, "Developmental Disabilities Agencies." The following therapy services are reimbursable when provided in accordance with these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies."~~ The following psychotherapy services must be available through each agency and based on assessment(s) conducted by the professional qualified to deliver the service:

~~(3-19-07)( )~~

~~a. Developmental Therapy. Developmental therapy may be delivered in a developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy.~~ Individual psychotherapy;

~~(3-19-07)( )~~

~~b. Psychotherapy Services. Psychotherapy services, alone or in combination with supportive counseling, are limited to a maximum of forty-five (45) hours in a calendar year, and~~

~~include:~~ Group psychotherapy in which there is a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and (3-19-07)( )

~~i. Individual psychotherapy;~~ (3-19-07)

~~ii. Group psychotherapy; and~~ (3-19-07)

~~iii. Family-centered psychotherapy which must include the participant and one (1) other family member at any given time.~~ (3-19-07)

~~c. Supportive Counseling. Supportive counseling must only be delivered on an individualized, one to one basis. Supportive counseling, alone or in combination with psychotherapy services, is limited to a maximum of forty five (45) hours in a calendar year.~~ Family-centered psychotherapy that includes the participant and at least one (1) other family member at any given time. (3-19-07)( )

~~d. Speech-Language Pathology Services. Speech language pathology services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739.~~ Psychotherapy services, alone or in combination with supportive counseling, are limited to a maximum of forty-five (45) hours in a calendar year, including individual, group, and family-centered. (4-2-08)( )

~~e. Physical Therapy Services. Physical therapy services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739.~~ Psychotherapy services must be provided by one (1) of the following qualified professionals: (4-2-08)( )

~~i. Licensed Psychiatrist;~~ ( )

~~ii. Licensed Physician;~~ ( )

~~iii. Licensed Psychologist;~~ ( )

~~iv. Licensed Clinical Social Worker;~~ ( )

~~v. Licensed Clinical Professional Counselor;~~ ( )

~~vi. Licensed Marriage and Family Therapist;~~ ( )

~~vii. Certified Psychiatric Nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree;~~ ( )

~~viii. Licensed Professional Counselor whose provision of psychotherapy is supervised by persons qualified above under Subsections 651.03.e.i. through 651.03.e.vii. of this rule;~~ ( )

~~ix. Registered Marriage and Family Therapist Intern whose provision of psychotherapy is supervised as described in Title 54, Chapter 34, Idaho Code and IDAPA~~

24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." ( )

x. Licensed Masters Social Worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; or ( )

xi. A Psychologist Extender, registered with the Bureau of Occupational Licenses, whose provision of psychotherapy is supervised as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." ( )

~~f. Occupational Therapy Services. Occupational therapy services include individual occupational therapy and group occupational therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (4-2-08)~~

~~g. Intensive Behavioral Intervention (IBI). IBI is limited to a lifetime limit of thirty six (36) months. (3-19-07)~~

~~i. The DDA must receive prior authorization from the Department prior to delivering IBI services. (3-19-07)~~

~~ii. IBI must only be delivered on an individualized, one-to-one basis. (3-19-07)~~

~~h. Intensive Behavioral Intervention (IBI) Consultation. IBI consultation is included in the thirty-six (36) month IBI limitation. The DDA must receive prior authorization from the Department prior to providing IBI Consultation. (3-19-07)~~

~~i. Collateral Contact. Collateral contact is consultation or treatment direction about the participant to a significant other in the participant's life and may be conducted face-to-face or by telephone contact. Collateral contact for general staff training, regularly scheduled parent-teacher conferences, general parent education, or for treatment team meetings, even when the parent is present, is not reimbursable. (3-19-07)~~

~~j. Pharmacological Management. Pharmacological management is consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or other practitioner of the healing arts in direct face-to-face contact with the participant and be provided in accordance with the plan of service with the type, amount, frequency and duration of the service specified. The telephoning of prescriptions to the pharmacy is not a billable service. (3-19-07)~~

**04. Excluded Occupational Therapy Services. The following services are excluded for Medicaid payments: Occupational therapy services include individual occupational therapy and group occupational therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Occupational therapy services must be available and provided by a licensed occupational therapist and be based on the results of an occupational therapy assessment completed in accordance with Section 655 of these rules. (3-19-07)( )**

~~a. Vocational services; (3-19-07)~~

~~b. Educational services; and (3-19-07)~~

~~c. Recreational services. (3-19-07)~~

**05. Limitations on DDA Physical Therapy Services.** ~~Therapy services may not exceed the limitations as specified below. Physical therapy services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Physical therapy services must be available and provided by a licensed physical therapist and be based on the results of a physical therapy assessment completed in accordance with Section 655 of these rules. (3-19-07)( )~~

~~a. The combination of therapy services listed in Subsections 653.03.a. through 653.03.g. of these rules must not exceed twenty-two (22) hours per week. (1-1-09)F~~

~~b. Therapy services listed in Subsections 653.03.a. through 653.03.g. of these rules provided in combination with Community Supported Employment services under Subsection 703.04 of these rules must not exceed forty (40) hours per week. (3-19-07)~~

~~c. When a HCBS waiver participant under Sections 700 through 719 of these rules receives Adult Day Care as provided in Subsection 703.12 of these rules, the combination of Adult Day Care, Developmental Therapy and Occupational therapy must not exceed thirty (30) hours per week. (3-19-07)~~

~~d. Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No therapy services will be reimbursed during periods when the participant is being transported to and from the agency. (3-19-07)~~

**06. Speech-Language Pathology Services.** ~~Speech-language pathology services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Speech-language pathology services must be available and provided by a qualified speech-language pathologist, as defined in these rules, and be based on the results of a speech and language assessment completed in accordance with Section 655 of these rules. ( )~~

**07. Optional Services.** ~~DDAs may opt to provide any of the following services: pharmacological management, psychiatric diagnostic interviews, community crisis supports, collateral contact, Intensive Behavioral Intervention (IBI), and supportive counseling. All services must be provided by qualified individuals in accordance with the requirements in Section 657 of these rules. ( )~~

**08. Pharmacological Management.** ~~Pharmacological management is consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or other practitioner of the healing arts in direct face-to-face contact with the participant and be provided in accordance with the plan of service with the type, amount, frequency, and duration of the service specified. The telephoning of prescriptions to the pharmacy is not a billable service. ( )~~

**09. Psychiatric Diagnostic Interview.** A psychiatric diagnostic interview must include a history, a current mental status examination, and offer recommendations for treatment interventions needed, if any. If the interview exam results in a recommendation for additional intervention and the recommendation is accepted by the participant and his parent or legal guardian, if applicable, the recommendation must be incorporated into the participant's plan of service with the type, amount, frequency, and duration of service specified. ( )

**a. Physician Requirement.** In order for a DDA to conduct a psychiatric diagnostic interview, the agency must have a physician on contract for the purpose of overseeing the services on the plan. ( )

**b. On Plan of Service.** A psychiatric diagnostic interview must be incorporated into the participant's plan of service. ( )

**c. Staff Qualifications.** A psychiatric diagnostic interview must be conducted by one (1) of the following professionals, in direct face-to-face contact with the participant: ( )

i. Psychiatrist; ( )

ii. Physician or other practitioner of the healing arts; ( )

iii. Psychologist; ( )

iv. Clinical social worker; or ( )

v. Clinical professional counselor. ( )

**10. Community Crisis Supports.** Community crisis supports are interventions for adult participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. DDAs that choose to provide these services must do so in accordance with Sections 507 through 515 of these rules. ( )

**11. Collateral Contact.** Collateral contact is consultation with or treatment direction given to a person with a primary relationship to a participant for the purpose of assisting the participant to live in the community. Collateral contact must be: ( )

**a. Conducted by Agency Professionals.** Be conducted by agency professionals qualified to deliver services and be necessary to gather and exchange information with individuals having a primary relationship to the participant. ( )

**b. Face to Face or by Telephone.** Be conducted either face-to-face or by telephone when telephone contact is the most expeditious and effective way to exchange information. Collateral contact does not include general staff training, general staffings, regularly scheduled parent-teacher conferences, general parent education, or treatment team meetings, even when the parent is present. ( )

**c. On the Plan of Service.** Have a goal and objective stated on the plan of service that

identifies the purpose and outcome of the service and is conducted only with individuals specifically identified on the plan of service. Program Implementation Plans are not required for collateral contact objectives. ( )

**12. Intensive Behavioral Intervention.** DDA's that choose to offer Intensive Behavioral Intervention (IBI) must provide IBI services in accordance with Sections 656 of these rules. ( )

**a.** IBI is limited to a lifetime limit of thirty-six (36) months. ( )

**b.** The DDA must receive prior authorization from the Department prior to delivering IBI services. ( )

**c.** IBI must only be delivered on an individualized, one-to-one (1 to 1) basis. ( )

**d.** Established Developmental Therapy Program. After July 1, 2006, agencies must have provided developmental therapy for at least one (1) year and not be operating under a provisional certification prior to providing IBI services. ( )

**e.** Exception. Agencies that were providing IBI services prior to July 1, 2006, are exempt from the requirement under Subsection 651.12.d. of this rule. ( )

**f.** IBI Consultation. IBI consultation, as described in Section 656 of these rules, is included in the thirty-six (36) month IBI limitation. The DDA must receive prior authorization from the Department prior to providing IBI Consultation. ( )

**13. Supportive Counseling.** Supportive counseling must only be delivered on an individualized, one to-one basis. Supportive counseling, alone or in combination with psychotherapy services, is limited to a maximum of forty-five (45) hours in a calendar year. ( )

**a.** Psychological Assessment. The initial and ongoing need for the service of supportive counseling must be recommended in a current psychological assessment. ( )

**b.** On Plan of Service. Supportive counseling must be provided in accordance with the requirements for the plan of service. The type, amount, frequency, and duration of this service must be specified on the plan of service. ( )

**c.** Staff Qualifications. Supportive counseling must be provided by a professional listed under Subsection 651.03.e. of these rules or by a licensed social worker (LSW). ( )

**14. Excluded Services.** The following services are excluded for Medicaid payments: ( )

**a.** Vocational services; ( )

**b.** Educational services; and ( )

c. Recreational services. ( )

**15. Limitations on DDA Services.** Therapy services may not exceed the limitations as specified below. ( )

a. The combination of therapy services listed in Subsections 651.02 through 651.06, 651.12, and 651.13 of this rule must not exceed twenty-two (22) hours per week. ( )

b. Therapy services listed in Subsections 651.02 through 651.06, 651.12, and 651.13 of this rule, provided in combination with Community Supported Employment services under Subsection 703.04 of these rules, must not exceed forty (40) hours per week. ( )

c. When an HCBS waiver participant under Sections 700 through 719 of these rules receives Adult Day Care as provided in Subsection 703.12 of these rules, the combination of Adult Day Care, Developmental Therapy and Occupational therapy must not exceed thirty (30) hours per week. ( )

d. Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No therapy services will be reimbursed during periods when the participant is being transported to and from the agency. ( )

**REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES AGENCIES PROVIDING SERVICES**  
**(Sections 652 through 659)**

**652. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO PERSONS EIGHTEEN YEARS OF AGE OR OLDER.**

This Section does not apply to adults who receive IBI or additional DDA services prior authorized under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." DDAs must comply with the requirements under Section 653 of these rules for those adults. ( )

**01. Eligibility Determination.** Prior to the delivery of any DDA services, the person must be determined to be eligible as defined under Section 66-402, Idaho Code, for DDA services. ( )

a. For persons seeking Medicaid-funded DDA services who are eighteen (18) years of age or older, the Department or its designee determines eligibility for services. ( )

b. For persons eighteen (18) years of age or older who are not Medicaid participants, the DDA must follow the requirements under Subsection 653.01 of these rules. ( )

**02. Intake.** ( )

a. For Medicaid participants eighteen (18) years of age or older, prior to the delivery of any Medicaid-funded DDA services: ( )

i. The Department or its designee will have provided the DDA with current medical, social, and developmental information; and ( )

ii. The participant must have an ISP that is authorized in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515. ( )

b. Participants eighteen (18) years of age or older receiving DDA services and who are using the Home and Community Based Services (HCBS) Waiver for the Aged and Disabled (A&D), State Plan PCS, or are living in a nursing facility must: ( )

i. Have DDA services prior authorized by the Department or its designee; and( )

ii. DDAs must complete an Individual Program Plan (IPP) that meets the standards described in Subsections 653.04 through 653.06 of these rules. IPPs for these individuals do not require the signature of a physician or other practitioner of the healing arts. ( )

c. For participants eighteen (18) years of age or older who are not Medicaid participants, the DDA must follow the requirements under Subsection 653.02 of these rules. ( )

03. Assessments. Requirements for assessments are found under Subsections 655.01 through 655.06 of these rules. ( )

04. Individual Service Plan (ISP). For participants eighteen (18) years of age or older any services provided by the DDA must be included on the plan of service and be prior authorized by the Department or its designee before a participant can receive the service from the agency. ( )

05. Documentation of Plan Changes. Documentation of changes in the required plan of service or Program Implementation Plan must be included in the participant's record. This documentation must include, at a minimum, the reason for the change, the date the change was made, and the signature of the professional making the change complete with date, credential, and title. If there are changes to a Program Implementation Plan that affect the type or amount of service on the plan of service, an addendum to the plan of service must be completed. ( )

**653. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN AGES THREE THROUGH SEVENTEEN AND ADULTS RECEIVING IBI OR ADDITIONAL DDA SERVICES PRIOR AUTHORIZED UNDER THE EPSDT PROGRAM.**

01. Eligibility Determination. Prior to the delivery of any DDA services, the DDA must determine and document the participant's eligibility in accordance with Section 66-402, Idaho Code. For eligibility determination, the following assessments must be obtained or completed by the DDA: ( )

a. Medical Assessment. This must contain medical information that accurately reflects the current status of the person and establishes categorical eligibility in accordance with Section 66-402(5)(a), Idaho Code; or ( )



**b. Psychological Assessment.** If the medical assessment does not establish categorical eligibility, the DDA must obtain or conduct a psychological assessment that accurately reflects the current status of the person and establishes categorical eligibility in accordance with Section 66-402(5)(a), Idaho Code. ( )

**c. Standardized Comprehensive Developmental Assessment.** This must contain developmental information regarding functional limitations that accurately reflects the current status of the person and establishes functional eligibility based on substantial limitations in accordance with Section 66-402(5)(b), Idaho Code. ( )

**02. Intake.** The DDA must obtain information that accurately reflects the current status and needs of the participant prior to the delivery of services. ( )

**a.** The person must have been determined by the DDA to be eligible for DDA services. ( )

**b.** The DDA must obtain or complete a comprehensive medical and medical/social history. ( )

**03. Assessments.** Requirements for assessments are found under Subsections 655.01 through 655.06 of these rules. ( )

**04. Individual Program Plan (IPP) Definitions.** The delivery of each service on a plan of service must be defined in terms of the type, amount, frequency, and duration of the service. ( )

**a.** Type of service refers to the kind of service described in terms of: ( )

i. Discipline; ( )

ii. Group, individual, or family; and ( )

iii. Whether the service is home, community, or center-based. ( )

**b.** Amount of service is the total number of service hours during a specified period of time. This is typically indicated in hours per week. ( )

**c.** Frequency of service is the number of times service is offered during a week or month. ( )

**d.** Duration of service is the length of time. This is typically the length of the plan year. For ongoing services, the duration is one (1) year; services that end prior to the end of the plan year must have a specified end date. ( )

**05. Individual Program Plan (IPP).** For participants three (3) through seventeen (17) years of age and for adults receiving EPDST services, the DDA is required to complete an IPP. ( )

**a.** The IPP must be developed following obtainment or completion of all applicable assessments consistent with the requirements of this chapter. ( )

**b.** The planning process must include the participant and his parent or legal guardian, if applicable, and others the participant or his parent or legal guardian chooses. The participant's parent or legal guardian must sign the IPP indicating his participation in its development. The parent or legal guardian must be provided a copy of the completed IPP. If the participant and his parent or legal guardian are unable to participate, the reason must be documented in the participant's record. A physician or other practitioner of the healing arts and the parent or legal guardian must sign the IPP prior to initiation of any services identified within the plan, except as provided under Subsection 652.02.b.ii. of these rules. ( )

**c.** The planning process must occur at least annually, or more often if necessary, to review and update the plan to reflect any changes in the needs or status of the participant. Revisions to the IPP requiring a change in type, amount, or duration of the service provided must be recommended by the physician or other practitioner of the healing arts prior to implementation of the change. Such recommendations must be signed by the physician or other practitioner of the healing arts and maintained in the participant's file. A parent or legal guardian must sign the IPP prior to initiation of any services identified within the plan. ( )

**d.** The IPP must be supported by the documentation required in the participant's record in accordance with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)" record requirements. ( )

**e.** The IPP must promote self-sufficiency, the participant's choice in program objectives and activities, encourage the participant's participation and inclusion in the community, and contain objectives that are age-appropriate. The IPP must include: ( )

**i.** The participant's name and medical diagnosis; ( )

**ii.** The name of the assigned Developmental Specialist, the date of the planning meeting, and the names and titles of those present at the meeting; ( )

**iii.** The dated signature of the physician or other practitioner of the healing arts indicating his recommendation of the services on the plan; ( )

**iv.** The type, amount, frequency, and duration of therapy to be provided. For developmental therapy, the total hours of services provided cannot exceed the amount recommended on the plan. The amount and frequency of the type of therapy must not deviate from the IPP more than twenty percent (20%) over a period of a four (4) weeks, unless there is documentation of a participant-based reason; ( )

**v.** A list of the participant's current personal goals, interests and choices; ( )

**vi.** An accurate, current, and relevant list of the participant's specific developmental and behavioral strengths and needs. The list will identify which needs are priority based on the participant's choices and preferences. An IPP objective must be developed for each priority need; ( )

- vii. A list of measurable behaviorally stated objectives, which correspond to the list of priority needs. A Program Implementation Plan must be developed for each objective; ( )
- viii. The discipline professional or Developmental Specialist responsible for each objective; ( )
- ix. The target date for completion of each objective; ( )
- x. The review date; and ( )
- xi. A transition plan. The transition plan is designed to facilitate the participant's independence, personal goals, and interests. The transition plan must specify criteria for participant transition into less restrictive, more integrated settings. These settings may include integrated classrooms, community-based organizations and activities, vocational training, supported or independent employment, volunteer opportunities, or other less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA. ( )

**06. Documentation of Plan Changes.** Documentation of required plan of service or Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum; ( )

- a. The reason for the change; ( )
- b. Documentation of coordination with other services providers, where applicable; ( )
- c. The date the change was made; and ( )
- d. The signature of the professional making the change complete with date, credential, and title. Changes to the IPP require documented notification of the participant or the participant's parent or legal guardian, if applicable. Changes in type, amount, or duration of services require written authorization from a physician or other practitioner of the healing arts and the participant or the participant's parent or legal guardian prior to the change. If the signatures of the participant or the parent or legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. ( )

**654.—655. (RESERVED) REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN BIRTH TO THREE YEARS OF AGE (INFANT TODDLER).**

Services provided by a DDA to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include: adherence to procedural safeguards and time lines, use of multi-disciplinary assessments and Individualized Family Service Plans (IFSPs), provision of early intervention services in the natural environment, transition planning, and program enrollment and reporting requirements. For children birth to age three (3), the IFSP will be used in lieu of the

Individual Program Plan (IPP). ( )

**01. Eligibility Determination.** For a child birth to three (3) years of age, prior to the delivery of any DDA services: ( )

**a.** In accordance with 34 CFR 303.321(e), the Department's regional Infant Toddler Program will determine eligibility for DDA services in accordance with Section 66-402, Idaho Code. ( )

**b.** Upon request from the DDA, and after receiving consent from the parent or legal guardian for release of information, the Department's regional Infant Toddler Program will provide the DDA with documentation of the child's eligibility including a copy of the current IFSP, addendum(a) to the IFSP, assessments, and service records related to current DDA services. ( )

**02. Intake.** Prior to the delivery of DDA services: ( )

**a.** The DDA must obtain both a copy of the current IFSP and a copy of all current assessment(s) used by the Department's regional Infant Toddler Program to determine eligibility for DDA services; and ( )

**b.** The DDA must conduct a meeting with the child's family, in cooperation with the child's service coordinator, to review the current IFSP and confirm the family's resources, priorities, and concerns with regard to the child's current developmental status and therapeutic needs. ( )

**03. Individualized Family Service Plan (IFSP).** The Department or its designee will develop the initial IFSP for each eligible child, birth to three (3) years of age. Each DDA that provides DDA services to an eligible child, birth to three (3) years of age, must implement services according to the IFSP for that child as required by the Individuals with Disabilities Education Act, (P.L. 108-446, December 2004), Part C, Section 636 (d) and Title 16, Chapter 1, Idaho Code. The DDA must use the Department-approved IFSP form in accordance with 34 CFR 303.344. The procedures for IFSP development, review, and assessment must be in accordance with 34 CFR 303.342. ( )

**a.** Development of the IFSP. For a child who has been evaluated for the first time and has been determined to be eligible for DDA services, the initial IFSP developed by the Department must be completed within a forty-five (45) day time period in accordance with 34 CFR 303.321(e). ( )

**b.** Periodic Reviews. In cooperation with the child's service coordinator and other service providers, the DDA must participate in a review of the IFSP to be conducted every six (6) months, or more frequently, if conditions warrant or if the family requests such a review. The purpose of the periodic review is to identify progress made toward each objective and to determine whether these current outcomes and objectives need modification or revision. The review may be carried out in a meeting or by another means that is acceptable to the parent or legal guardian and other participants. These reviews must include the degree to which progress toward achieving the outcomes is being made. ( )

i. The DDA must provide the child's service coordinator with any current assessments and other information from the ongoing assessment of the child to determine what services are needed and will be provided. ( )

ii. The DDA must identify outcomes and objectives for inclusion in the IFSP for any services to be provided through the DDA. ( )

c. Participants in the IFSP meetings and periodic reviews must be in accordance with 34 CFR 303.343. IFSP meetings and periodic reviews must include the parent or legal guardian, the service coordinator working with the family, persons providing direct services to the child and family as appropriate, and persons directly involved in conducting the assessments of the child. The family is encouraged to invite any family member, advocate, or friend to the meeting to assist in the planning process. ( )

d. The IFSP or IFSP addendum must be in accordance with 34 CFR 303.344, and include the following: ( )

i. A statement of the outcome; ( )

ii. Steps to support transitions; ( )

iii. Behaviorally-stated objectives toward meeting that outcome; ( )

iv. Frequency, intensity, and method of delivering a service to meet the outcome; ( )

v. Measurability criteria, strategies, and activities; ( )

vi. Start and end dates; ( )

vii. A description of the natural environments in which early intervention services are appropriately provided, including a justification of the extent, if any, to which services will not be provided in a natural environment; and ( )

viii. A list of who will be involved in the direct intervention. ( )

e. There must be an order by a physician or other practitioner of the healing arts for all DDA services included on the IFSP. ( )

f. Transition to preschool programs must be in accordance with 34 CFR 303.148. ( )

i. At the IFSP review closest to the child's second birthday, outcomes must be written to address the steps needed to ensure appropriate services for the child at age three (3). ( )

ii. At least six (6) months prior to the child's third birthday, the DDA must document contact with the child's service coordinator and participation in the transition planning process at

the time of referral of the child to his local school district for IDEA, Part B, eligibility determination. ( )

**04. Parental Consent and Right to Decline Service.** Written parental consent must be obtained before: ( )

**a.** Conducting the assessment of a child; and ( )

**b.** Initiating the provision of services. ( )

**05. Ongoing Assessment of the Child.** The assessment of each child must: ( )

**a.** Be conducted by personnel trained to utilize appropriate methods and procedures; ( )

**b.** Be based on informed clinical opinion; and ( )

**c.** Include the following: ( )

**i.** A review of pertinent records related to the child's current health status and medical history. ( )

**ii.** An assessment of the child's level of functioning in cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development. ( )

**iii.** An assessment of the unique needs of the child in terms of each of the developmental areas mentioned above in Subsection 654.05.c.ii. of this rule, including the identification of services appropriate to meet those needs. ( )

**06. Services in the Natural Environment.** Natural environments are settings that are natural or normal for the child's age peers who have no disability. To the maximum extent appropriate, in order to meet the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. ( )

**07. Documentation of Program Changes.** Documentation of required plan or Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other services providers, where applicable, the date the change was made, and the signature of the professional making the change complete with date, credential, and title. If there are changes to the Program Implementation Plan that affect the IFSP, an addendum to the IFSP must be completed: ( )

**a.** In cooperation with the service coordinator; ( )

**b.** With consent of the parent; ( )

- c. With an order by the child's physician or other practitioner of the healing arts; ( )
- d. With all changes documented on the enrollment form; and ( )
- e. A copy of the addendum and the enrollment form must be submitted to the Department. ( )

**655. DDA SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Assessment and Diagnostic Services.** Twelve (12) hours is the maximum Medicaid reimbursable time allowed for the combination of all assessment, evaluation, or diagnostic services provided in any calendar year. Additional hours may be approved for a child through the month of his twenty-first birthday with approval from EPSDT staff in the Division of Medicaid. The following assessment and diagnostic services are reimbursable when provided in accordance with these rules: ( )

- a. Comprehensive Developmental Assessment; ( )
- b. Comprehensive Intensive Behavioral Intervention (IBI) Assessment. Before conducting the comprehensive IBI assessment, the DDA must receive prior authorization from the Department. The time required to complete this assessment is included in the thirty-six (36) month IBI limitation but does not count against the twelve (12) hour limitation described in Subsection 655.01 of this rule; ( )
- c. Occupational Therapy Assessment; ( )
- d. Physical Therapy Assessment; ( )
- e. Speech and Language Assessment; ( )
- f. Medical/Social History; and ( )
- g. Psychological Assessment. Includes psychological testing and psychiatric diagnostic interview. ( )

**02. Comprehensive Assessments Conducted by the DDA.** Assessments must be conducted by qualified professionals defined under Section 657 of these rules for the respective discipline or areas of service. ( )

- a. Comprehensive Assessments. A comprehensive assessment must: ( )
  - i. Determine the necessity of the service; ( )
  - ii. Determine the participant's needs; ( )
  - iii. Guide treatment; ( )

iv. Identify the participant's current and relevant strengths, needs, and interests when these are applicable to the respective discipline; and ( )

v. For medical or psychiatric assessments, formulate a diagnosis. For psychological assessments, formulate a diagnosis and recommend the type of therapy necessary to address the participant's needs. For other types of assessments, recommend the type and amount of therapy necessary to address the participant's needs. ( )

**b.** Current Assessments Required. When the DDA determines developmental disabilities eligibility, current assessments must be completed or obtained as necessary. ( )

**c.** Date, Signature, and Credential Requirements. Assessments must be signed and dated by the professional completing the assessment and include the appropriate professional credential or qualification of that person. ( )

**d.** Assessment must be completed within forty-five (45) days. ( )

i. With the exception noted under Subsection 655.02.d.ii. of this rule, each assessment must be completed within forty-five (45) calendar days of the date it was recommended by the physician or other practitioner of the healing arts. If the assessment is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. ( )

ii. This forty-five (45) day requirement does not apply to participant plans of service authorized under Sections 507 through 515 of these rules. ( )

**03. Requirements for Current Assessments.** Assessments must accurately reflect the current status of the participant. ( )

**a.** Current Assessments for Ongoing Services. To be considered current, assessments must be completed or updated at least annually for service areas in which the participant is receiving services on an ongoing basis. ( )

**b.** Updated Assessments. Assessments or updates are required in disciplines in which services are being delivered and when recommended by a professional. At the time of the required review of the assessment(s), the qualified professional in the respective discipline must determine whether a full assessment or an updated assessment is required for the purpose of reflecting the participant's current status in that service area. If, during the required review of the assessment(s), the latest assessment accurately represents the status of the participant, the file must contain documentation from the professional stating so. ( )

**c.** Medical/Social Histories and Medical Assessments. Medical/social histories and medical assessments must be completed at a frequency determined by the recommendation of a professional qualified to conduct those assessments. ( )

**d.** Intelligence Quotient (IQ) Tests. Once initial eligibility has been established, annual assessment of IQ is not required for persons whose categorical eligibility for DDA services is based on a diagnosis of mental retardation. IQ testing must be reconducted on a



frequency determined and documented by the agency psychologist or at the request of the Department. ( )

e. Completion of Assessments. Assessments must be completed or obtained prior to the delivery of therapy in each type of service. ( )

f. Psychological Assessment. A current psychological assessment must be completed or obtained: ( )

i. When the participant is receiving a behavior modifying drug(s); ( )

ii. Prior to the initiation of restrictive interventions to modify inappropriate behavior(s); ( )

iii. Prior to the initiation of supportive counseling; ( )

iv. When it is necessary to determine eligibility for services or establish a diagnosis; ( )

v. When a participant has been diagnosed with mental illness; or ( )

vi. When a child has been identified to have a severe emotional disturbance. ( )

**04. Assessments for Adults.** DDAs must obtain assessments required under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515 of these rules. All specific skill assessments must be conducted in accordance with Subsection 655.06 of these rules. ( )

**05. Types of Comprehensive Assessments.** ( )

a. Comprehensive Developmental Assessment. A comprehensive developmental assessment must be conducted by a qualified Development Specialist and reflect a person's developmental status in the following areas: ( )

i. Self-care; ( )

ii. Receptive and expressive language; ( )

iii. Learning; ( )

iv. Gross and fine motor development; ( )

v. Self-direction; ( )

vi. Capacity for independent living; and ( )

vii. Economic self-sufficiency. ( )

**b. Comprehensive Intensive Behavioral Intervention (IBI) Assessment.** The requirements for the comprehensive IBI assessment are found under Subsection 656.03 of these rules. ( )

**c. Occupational Therapy Assessment.** Occupational therapy assessments must be conducted by an occupational therapist qualified under Section 657 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the participant's needs. ( )

**d. Physical Therapy Assessment.** Physical therapy assessments must be conducted by a physical therapist qualified under Section 657 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the participant's needs. ( )

**e. Speech and Language Assessment.** Speech and language assessments must be conducted by a Speech-Language Pathologist who is qualified under Section 657 of these rules. ( )

**f. Medical Assessments.** Medical assessments must be completed by a physician or other practitioner of the healing arts who is qualified in accordance with Section 657 of these rules and accurately reflects the current status and needs of the person. ( )

**g. Medical/Social History.** Medical/social histories must be completed by a licensed social worker or other qualified professional working within the scope of his license. The medical/social history is a narrative report that must include: ( )

**i. Medical history including age of onset of disability, prenatal and postnatal birth issues, other major medical issues, surgeries, and general current health information;** ( )

**ii. Developmental history including developmental milestones and developmental treatment interventions;** ( )

**iii. Personal history including social functioning/social relationships, recreational activities, hobbies, any legal and criminal history, and any history of abuse;** ( )

**iv. Family history including information about living or deceased parents and siblings, family medical history, relevant family cultural background, resources in the family for the participant;** ( )

**v. Educational history including any participation in special education;** ( )

**vi. Prevocational or vocational paid and unpaid work experiences;** ( )

**vii. Financial resources; and** ( )

**viii. Recommendation of services necessary to address the participant's needs.** ( )

**h. Hearing Assessment.** A hearing assessment must be conducted by an audiologist who is qualified under Section 657 of these rules. ( )

i. Psychological Assessment. A psychological assessment includes psychological testing for diagnosis and assessment of personality, psychopathology, emotionality, or intellectual abilities (IQ test). The assessment must include a narrative report. Psychological assessment encompasses psychological testing and the psychiatric diagnostic interview. ( )

i. Psychological Testing. Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of a person's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses, or functional impairments. ( )

i. Psychological testing may be provided when in direct response to a specific assessment question. ( )

ii. The psychological report must contain the reason for the performance of this service. ( )

iii. Agency staff may deliver this service if they meet one (1) of the following qualifications: ( )

(1) Licensed Psychologist; ( )

(2) Psychologist Extender; or ( )

(3) A qualified therapist listed in Subsection 651.03.e. of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. ( )

k. Psychiatric Diagnostic Interview. A psychiatric diagnostic interview must be conducted in accordance with Subsection 651.09 of these rules. ( )

**06. Requirements for Specific Skill Assessments.** Specific skill assessments must: ( )

a. Further Assessment. Further assess an area of limitation or deficit identified on a comprehensive assessment. ( )

b. Related to a Goal. Be related to a goal on the IPP, ISP, or IFSP. ( )

c. Conducted by Qualified Professionals. Be conducted by qualified professionals for the respective disciplines as defined in this chapter. ( )

d. Determine a Participant's Skill Level. Be conducted for the purposes of determining a participant's skill level within a specific domain. ( )

e. Determine Baselines. Be used to determine baselines and develop the program

implementation plan. ( )

**07. DDA Program Documentation Requirements.** Each DDA must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. ( )

**a. General Requirements for Program Documentation.** For each participant the following program documentation is required: ( )

i. Daily entry of all activities conducted toward meeting participant objectives. ( )

ii. Sufficient progress data to accurately assess the participant's progress toward each objective; and ( )

iii. A review of the data, and, when indicated, changes in the daily activities or specific implementation procedures by the qualified professional. The review must include the qualified professional's dated initials. ( )

iv. When a participant receives developmental therapy, documentation of six (6) month and annual reviews by the Developmental Specialist that includes a written description of the participant's progress toward the achievement of therapeutic goals, and the reason(s) why he continues to need services. ( )

**b. Additional Requirements for Participants Eighteen Years or Older.** For participant's eighteen (18) years of age or older, DDAs must also submit provider status reviews to the plan monitor in accordance with Sections 507 through 515 of these rules. ( )

**c. Additional Requirements for Participants Seven Through Sixteen.** For participants ages seven (7) through sixteen (16), the DDA must also document that the child has been referred to the local school district in accordance with the collaboration requirements in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ( )

**d. Additional Requirements for Participants Birth to Three Years of Age.** For participants birth to age three (3), the following are required in addition to those requirements in Subsection 654.01 of these rules: ( )

i. Documentation of the six (6) month and annual reviews; ( )

ii. Documentation of participation in transition planning at the IFSP developed closest to the child's second birthday to ensure service continuity and access to community services as early intervention services end at age three (3); ( )

iii. Documentation that participant rights have been met in accordance with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ( )

iv. Documentation of participation in the transition meeting with the school district; and ( )

v. Documentation of consultation with other service providers who are identified on the IFSP. ( )

**08. DDA Program Implementation Plan Requirements.** For each participant, the DDA must develop a Program Implementation Plan for each DDA objective included on the participant's required plan of service. All Program Implementation Plans must be related to a goal or objective on the participant's plan of service. The Program Implementation Plan must be written and implemented within fourteen (14) days after the first day of ongoing programming and be revised whenever participant needs change. If the Program Implementation Plan is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. The Program Implementation Plan must include the following requirements: ( )

a. Name. The participant's name. ( )

b. Baseline Statement. A baseline statement addressing the participant's skill level and abilities related to the specific skill to be learned. ( )

c. Objectives. Measurable, behaviorally-stated objectives that correspond to those goals or objectives previously identified on the required plan of service. ( )

d. Written Instructions to Staff. These instructions may include curriculum, interventions, task analyses, activity schedules, type and frequency of reinforcement, and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. ( )

e. Service Environments. Identification of the type of environment(s) where services will be provided. ( )

f. Target Date. Target date for completion. ( )

g. Results of the Psychological or Psychiatric Assessment. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to ensure therapies provided in the DDA accommodate the participant's mental health needs and to ensure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant's mental health status. ( )

**656. REQUIREMENTS FOR THE DELIVERY OF INTENSIVE BEHAVIORAL INTERVENTION (IBI).**

**01. Individualized and Comprehensive Interventions.** IBI consists of individualized, comprehensive interventions that have been shown to be effective and are used on a short term, one-to-one basis. These interventions: ( )

a. Produce measurable outcomes that diminish behaviors that interfere with the

development and use of language and appropriate social interaction skills; or ( )

**b.** Broaden an otherwise severely restricted range of interest; and ( )

**c.** Increase the child's ability to participate in other therapies and environments. ( )

**02. IBI Authorization and Review.** IBI services must be reviewed and prior authorized for each service year as follows: ( )

**a.** Initial IBI Authorization. The Department determines IBI eligibility based on information submitted by the DDA and other information gathered by the Department as deemed necessary. At least twenty (20) working days prior to the intended start date of IBI services, the DDA must use Department-approved forms to submit; ( )

i. Evidence of the child's eligibility for Intensive Behavioral Intervention; ( )

ii. The comprehensive IBI assessments; ( )

iii. The Program Implementation Plans; ( )

iv. The number of hours of service requested; and ( )

v. Measurable objectives. ( )

**b.** Three- (3) Month Review. The agency must conduct and document a formal review of therapy objectives and direction for future therapy for each objective. ( )

**c.** Six- (6) Month Review and Authorization. At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit: ( )

i. The three- (3) month review; ( )

ii. Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for those six (6) months; and ( )

iii. When continuing IBI services are requested, the Program Implementation Plans, the number of hours of service requested, and the measurable objectives, using Department-approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services. ( )

**d.** Nine- (9) Month Review. The agency must conduct and document a formal review of therapy objectives and direction for future therapy for each objective. ( )

**e.** Annual Review and Authorization. At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit: ( )

i. The nine- (9) month review; ( )

ii. Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for that year; and ( )

iii. When continuing IBI services are requested: ( )

(1) A new SIB-R that reflects the child's current status and any additional information required to establish continuing eligibility; ( )

(2) The Program Implementation Plans; and ( )

(3) The number of hours of service requested and the measurable objectives, using Department-approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services. ( )

**03. Comprehensive IBI Assessment.** A comprehensive IBI assessment must be completed by a certified IBI professional prior to the initial provision of IBI or IBI Consultation. The results of the assessment must form the basis for planning interventions. The assessment must include the following: ( )

a. Review of Assessments and Relevant Histories. ( )

i. Medical history, medications, and current medical status; ( )

ii. Medical/social history that includes a developmental history and onset of developmental disability; ( )

iii. Comprehensive developmental assessment reflecting the child's current status; ( )

iv. Specific skill assessment, when such an assessment is completed; ( )

v. SIB-R Maladaptive Index and a list of the child's maladaptive behaviors; ( )

vi. Baseline of the child's maladaptive behavior(s), if available; ( )

vii. Psychological assessments and results of psychometric testing, or for very young children, a developmental assessment with equivalent age-appropriate social-emotional status, if available; ( )

viii. A mental health or social and emotional assessment, such as the Child and Adolescent Functional Assessment Scale (CAFAS), when one has been completed; ( )

ix. Public school or Infant Toddler Program records including relevant birth records, multidisciplinary team assessments, recommendations, and Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs); and ( )

x. Other relevant assessments that may be available, including those for speech and

hearing and physical and occupational therapy. ( )

**b.** Interviews. Interviews must be conducted with the child, if possible, and to the extent of the child's abilities; the child's parent or legal guardian, or the primary care provider; and any other individuals who spend significant amounts of time with the child. These interviews must result in a written summary of the findings of each interview and include the following:

( )

i. Description of the child's desired and problem behaviors; ( )

ii. Opinion about environmental stimuli that appear to precede problem behaviors;

( )

iii. Opinion about the internal states or setting events that precede desired and problem behaviors;

( )

iv. Opinion about identification of stimuli that maintain the desired or problem behaviors; and

( )

v. Opinion about factors that alleviate problem behaviors and increase desired behaviors.

( )

**c.** Observation of the Child. Observations of the child must occur in environments in which the child spends significant amounts of time and where problem behaviors have been reported. Results of the observations must include the following:

( )

i. Specific descriptions and frequencies of problem behaviors; ( )

ii. Identification of environmental stimuli that appear to precede problem behaviors;

( )

iii. Identification of internal states or setting events that appear to precede problem behaviors;

( )

iv. Identification of stimuli that maintain the desired or problem behaviors; and

( )

v. Identification of factors that alleviate problem behaviors and increase desired behaviors.

( )

**d.** Clinical Opinion. Clinical opinion about the underlying causes, antecedents, motivations, and communicative intent of desired and problem behaviors.

( )

**04. IBI Program Implementation Plans Requirements.** In addition to the requirements under Subsections 655.08.a. through 655.08.g. of these rules, the following are also required for IBI Implementation Plans:

( )

**a.** All IBI Implementation Plans must be completed on the Department-approved form.

( )



**b.** On all IBI Implementation Plan cover sheets, the signature of a parent or legal guardian is required. If the signatures of the parent or legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. ( )

**05. IBI Transition Plan.** An IBI transition plan must be developed when it is anticipated that IBI services will be terminated within the next Department or agency review period and the child will be moving into natural learning environments or less intensive therapy settings. The IBI transition plan may not be used as a substitute for, nor does it replace the transition plans required under Sections 653 and 654 of these rules. IBI transition plans must include the following steps to support the transition and the timelines for those steps: ( )

**a.** Setting. The setting to which the child will be moving and the therapists or persons who will be interacting with the child; and ( )

**b.** Training of New Therapists or Other Persons. How behavioral intervention techniques will be shared with new therapists or other persons in the new environments to encourage generalization and maintenance of appropriate behavior and action to be taken if the child demonstrates regression in the new setting in skills learned through IBI. ( )

**06. IBI Consultation.** Professionals may provide IBI consultation to parents and other family members, professionals, paraprofessionals, school personnel, child care providers, or other caregivers who provide therapy or care for an IBI eligible child in other disciplines to ensure successful integration and transition from IBI to other therapies, services, or types of care. IBI consultation objectives and methods of measurement must be developed in collaboration with the person receiving IBI consultation. ( )

**a.** Service Delivery Qualification. IBI consultation must be delivered by an IBI professional who meets the requirements in Section 657 of these rules. ( )

**b.** Measurable Progress. IBI consultation must result in measurable improvement in the child's behavior. It is not intended to be used for educational purposes only. ( )

**c.** Evidence of Progress. Persons who receive IBI consultation must meet with the IBI professional, agree to follow an IBI Implementation Plan, and provide evidence of progress. ( )

**d.** Individualized. IBI consultation may not be reimbursed when it is delivered to a group of parents. IBI consultation is specific to the unique circumstances of each child. ( )

**657. DDA SERVICES: DDA PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Audiologist, Licensed.** A person licensed to conduct hearing assessment and therapy, in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, who either possesses a certificate of clinical competence in audiology from the American Speech, Language and Hearing Association (ASHA) or will be eligible for certification within one (1) year of employment. The agency's personnel records must reflect the expected date

of certification. ( )

**02. Counselor, Licensed Clinical Professional.** A person licensed to practice as a clinical professional counselor in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” ( )

**03. Counselor, Licensed Professional.** A person licensed to practice as a professional counselor in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” ( )

**04. Marriage and Family Therapist.** ( )

**a. Licensed Marriage and Family Therapist.** A person licensed to practice as a marriage and family therapist in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” ( )

**b. Registered Marriage and Family Therapist Intern.** A person registered to practice as a marriage and family therapist intern under the direct supervision of a Licensed Marriage and Family Therapist, in accordance with Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” ( )

**05. Developmental Specialist for Adults.** To be qualified as a Developmental Specialist for adults, a person must have a minimum of two hundred forty (240) hours of professionally-supervised experience with individuals who have developmental disabilities and either: ( )

**a. Possess a bachelor's or master's degree in special education, early childhood special education, speech and language pathology, applied behavioral analysis, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation; or** ( )

**b. Possess a bachelor's or master's degree in an area not listed above in Subsection 657.05.a. of this rule and have:** ( )

**i. Completed a competency course jointly approved by the Department and the Idaho Association of Developmental Disabilities Agencies that relates to the job requirements of a Developmental Specialist; and** ( )

**ii. Passed a competency examination approved by the Department.** ( )

**c. Any person employed as a Developmental Specialist in Idaho prior to May 30, 1997, unless previously disallowed by the Department, will be allowed to continue providing services as a Developmental Specialist as long as there is not a gap of more than three (3) years of employment as a Developmental Specialist.** ( )

**06. Developmental Specialist for Children Three Through Seventeen.** A Developmental Specialist providing developmental assessment and therapy services to children ages three (3) through seventeen (17) must meet the requirements for a Developmental Specialist for adults, and must also meet the following requirements: ( )

**a.** Successfully complete a competency course approved by the Department that relates to developmental assessment and therapy for children; and ( )

**b.** Pass a competency examination approved by the Department. ( )

**07. Developmental Therapy Paraprofessionals Delivering Services to Participants Age Three and Older.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children age (3) and older if they are under the supervision of a Developmental Specialist. A developmental therapy paraprofessional must be at least seventeen (17) years of age. ( )

**08. Developmental Specialist for Children Birth to Three.** ( )

**a.** To provide developmental assessments and therapy to children birth to three (3) years of age, a person must have a minimum of two hundred forty (240) hours of professionally-supervised experience with young children who have developmental disabilities and one (1) of the following: ( )

**i.** An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or ( )

**ii.** A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate; ( )

**iii.** A bachelor's or masters degree in special education, elementary education, speech-language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content: ( )

**(1)** Promotion of development and learning for children from birth to three (3) years; ( )

**(2)** Assessment and observation methods for developmentally appropriate assessment of young children; ( )

**(3)** Building family and community relationships to support early interventions;( )

**(4)** Development of appropriate curriculum for young children, including IFSP and IEP development; ( )

**(5)** Implementation of instructional and developmentally effective approaches for

early learning, including strategies for children who are medically fragile and their families; and ( )

(6) Demonstration of knowledge of policies and procedures in special education and early intervention and demonstration of knowledge of exceptionalities in children's development. ( )

**b.** Electives closely related to the content under Subsection 657.08.a.iii. of this rule may be approved by the Department with a recommendation from an institution of higher education. ( )

**c.** A developmental specialist who possesses a bachelor's or master's degree listed above under Subsection 657.08.a.ii. of this rule, must have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services in accordance with his approved, conditional hiring agreement. ( )

**d.** When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage of such qualified personnel to meet service needs in a specific geographic area: ( )

**i.** The Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individual's approved plan to meet the required standard within three (3) years of being hired. ( )

**ii.** Satisfactory progress will be determined on an annual review by the Department. ( )

**iii.** An individual who has an approved plan for completion of twenty (20) semester credits in EC/ECSE prior to July 1, 2005, will be allowed to continue providing services so long as he demonstrates satisfactory progress on the plan and complete the requirements on the plan within three (3) years of his date of hire. ( )

**09. Developmental Therapy Paraprofessionals Delivering Services to Children Birth to Three.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children birth to three (3) years of age if they are under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. Developmental therapy paraprofessionals serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: ( )

**a.** Be at least eighteen (18) years of age; ( )

**b.** Be a high school graduate or have a GED; and ( )

**c.** Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) semester credits from an accredited college or university in child development, special education or closely-related

coursework; or ( )

**d.** Have three (3) years of documented experience providing care to infants, toddlers, or children less than five (5) years of age with developmental delays or disabilities under the supervision of a child development professional, certified educator, licensed therapist, or Developmental Specialist. ( )

**10. Intensive Behavioral Intervention (IBI) Professional Delivering Services to Participants Three to Twenty-One.** A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements: ( )

**a.** Degree. A qualified IBI professional must hold at least a bachelor's degree in a health, human services, educational, behavioral science, or counseling field from a nationally accredited university or college. ( )

**b.** Experience. An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. ( )

**c.** Training and Certification. Qualified IBI professionals and paraprofessionals must comply with the requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410. ( )

**11. IBI Paraprofessionals Delivering Services to Participants Three to Twenty-One.** A certified IBI paraprofessional may be used to provide IBI under the supervision of a certified IBI professional and must comply with Section 658 of these rules. An IBI paraprofessional must also: ( )

**a.** Be at least eighteen (18) years of age; ( )

**b.** Experience. An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year of supervised experience working with children with developmental disabilities. The year of experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. ( )

**c.** Training and Certification. Qualified IBI professionals and paraprofessionals must comply with the requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410. ( )

**12. IBI Professionals Delivering Services to Children Birth to Three.** A person qualified to provide or direct the provision of IBI to children under three (3) years of age must meet the staff qualifications described under Subsections 657.08.a.ii. through 657.08.d. of these rules, 657.10.b. and 657.10.c. of these rules and the certification and training requirements above

under Subsections 658.01.e. and 658.01.f. of these rules. ( )

**13. IBI Paraprofessionals Delivering Services to Children Birth to Three.** A paraprofessional serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: ( )

**a.** Be at least eighteen (18) years of age; ( )

**b.** Be a high school graduate or have a GED; and ( )

**c.** Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) credits in child development, special education, or closely-related coursework; or ( )

**d.** Have three (3) years of documented experience providing care to infants, toddlers or children under five (5) years of age under the supervision of a child development professional, certified educator, or licensed therapist or Developmental Specialist. ( )

**e.** Qualified IBI professionals and paraprofessionals must comply with the requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410, and Subsections 658.01.e. and 658.01.f. of these rules. ( )

**14. Nurse Practitioner.** A licensed professional nurse (RN) who has met all the applicable requirements to practice as nurse practitioner under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." ( )

**15. Occupational Therapist.** A person qualified to conduct occupational therapy assessments and therapy in accordance with the requirements in IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants." ( )

**16. Physical Therapist.** A person qualified to conduct physical therapy assessments and therapy in accordance with the requirements in IDAPA 22.01.05, "Licensure of Physical Therapists Idaho State Board of Medicine and Physical Therapist Assistants." ( )

**17. Physician.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Title 54, Chapter 18, Idaho Code. ( )

**18. Physician Assistant.** A person who is licensed by the Idaho Board of Medicine and who meets at least one (1) of the following provisions: ( )

**a.** Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or ( )

**b.** Has satisfactorily completed a program for preparing physician's assistants that: ( )

**i.** Was at least one (1) academic year in length; and ( )

ii. Consisted of supervised clinical practice and at least four (4) months, in the aggregate, of classroom instruction directed toward preparing students to deliver health care; and ( )

iii. Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation. ( )

**19. Psychiatric Nurse, Certified.** A licensed professional nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. ( )

**20. Psychiatrist.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Title 54, Chapter 18, Idaho Code, and who meets the requirements for certification in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry. ( )

**21. Psychologist.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." ( )

**22. Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners," and who is registered with the Bureau of Occupational Licenses. ( )

**23. Social Worker, Licensed.** A person licensed in accordance with the Social Work Licensing Act, Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." ( )

**24. Masters Social Worker, Licensed.** A person who is licensed as a masters social worker (LMSW) in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." ( )

**25. Clinical Social Worker, Licensed.** A person who is licensed as a clinical social worker (LCSW) in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." ( )

**26. Speech-Language Pathologist, Licensed.** A person licensed to conduct speech-language assessment and therapy in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, who possesses a certificate of clinical competence in speech-language pathology from the American Speech, Language and Hearing Association (ASHA) or who will be eligible for certification within one (1) year of employment. The agency's personnel records must reflect the expected date of certification. ( )

**27. Requirements for Collaboration with Other Providers.** *When participants are receiving rehabilitative or habilitative services from other providers, each DDA must coordinate each participant's DDA program with these providers to maximize skill acquisition and generalization of skills across environments, and to avoid duplication of services. The DDA must*

*maintain documentation of this collaboration. This documentation includes other plans of services such as the Individual Education Plan (IEP), Personal Care Services (PCS) plan, Residential Habilitation plan, and the Psychosocial Rehabilitation (PSR) plan. The participant's file must also reflect how these plans have been integrated into the DDA's plan of service for each participant.* ( )

**658. GENERAL STAFFING REQUIREMENTS FOR AGENCIES.**

**01. Standards for Paraprofessionals Providing Developmental Therapy and IBI.**

When a paraprofessional provides either developmental therapy or IBI, the agency must ensure adequate supervision by a qualified professional during its service hours. All paraprofessionals must meet the training requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410 and must meet the qualifications under Section 657 of these rules. A paraprofessional providing IBI must be supervised by an IBI professional; a paraprofessional providing developmental therapy must be supervised by a Developmental Specialist. Paraprofessionals providing developmental therapy to children birth to three (3) years of age must work under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. For paraprofessionals to provide developmental therapy or IBI in a DDA, the agency must adhere to the following standards: ( )

**a. Limits to Paraprofessional Activities.** The agency must ensure that paraprofessionals do not conduct participant assessments, establish a plan of service, develop a Program Implementation Plan, or conduct collateral contact or IBI consultation. These activities must be conducted by a professional qualified to provide the service. ( )

**b. Frequency of Supervision.** The agency must ensure that a professional qualified to provide the service must, for all paraprofessionals under his supervision, on a weekly basis or more often if necessary: ( )

i. Give instructions; ( )

ii. Review progress; and ( )

iii. Provide training on the program(s) and procedures to be followed. ( )

**c. Professional Observation.** The agency must ensure that a professional qualified to provide the service must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional under his supervision, to ensure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). ( )

**d. Limitations to Service Provision by an IBI Paraprofessional.** IBI provided by a paraprofessional is limited to ninety percent (90%) of the direct intervention time, per individual participant. The remaining ten percent (10%) of the direct intervention time must be provided by the professional qualified to provide and direct the provision of IBI. ( )

**e. Additional Training Requirements for IBI Professionals and IBI Paraprofessionals.** Qualified IBI professionals and IBI paraprofessionals must complete and pass a Department-



approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of IBI and ethical standards. Specifically, the curriculum must include: ( )

i. Assessment of individuals; ( )

ii. Behavioral management; ( )

iii. Services or treatment of individuals; ( )

iv. Supervised practical experience; and ( )

v. Successful completion of a student project that includes an observation of demonstrated competencies for all individuals applying for initial certification or recertification after July 1, 2003. ( )

f. Continuing Training Requirements for IBI Professionals and IBI Paraprofessionals. Each IBI professional and IBI paraprofessional, in order to maintain certification, must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. ( )

i. The initial IBI certification training meets the yearly training requirement for the calendar year in which the IBI professional or paraprofessional was first certified. ( )

ii. If the individual has not completed the required training during any yearly training period, he may not provide IBI services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to any training-deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period. ( )

iii. An individual may remain IBI certified, despite being unable to bill for services, through two (2) consecutive annual training periods during which that individual has deficient training hours. A DDA may begin billing for the certified IBI Professional or Paraprofessional again after the required training hours are accumulated. ( )

iv. If an individual completes three (3) consecutive annual training periods without having accumulated sufficient training to satisfy the training requirement for the first of those periods, that individual's IBI certification is automatically rescinded and will no longer be recognized. To be recertified, the individual must retake the state IBI exam and complete the IBI Student Project, if not previously completed. ( )

**02. General Staffing Requirements for Agencies.** ( )

a. Administrative Staffing. Each DDA must have an agency administrator who is accountable for all service elements of the agency and who must be employed on a continuous and regularly scheduled basis. The agency administrator is accountable for the overall operations of the agency including ensuring compliance with this chapter of rules, overseeing and managing

staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program. ( )

i. When the administrator is not a Developmental Specialist as defined in these rules, the DDA must employ a Developmental Specialist on a continuous and regularly scheduled basis who is responsible for the service elements of the agency; and ( )

ii. The Developmental Specialist responsible for the service elements of the agency must have two (2) years of supervisory or management experience providing developmental disabilities services to individuals with developmental disabilities. ( )

b. Other required staffing. The agency must have available, at a minimum, the following personnel, qualified in accordance with Section 657 of these rules, as employees of the agency or through formal written agreement: ( )

i. Speech-language pathologist or audiologist; ( )

ii. Developmental Specialist; ( )

iii. Occupational therapist; ( )

iv. Physical therapist; ( )

v. Psychologist; and ( )

vi. Social worker, or other professional qualified to provide the required services under the scope of his license. ( )

**6569. DDA SERVICES: PROVIDER REIMBURSEMENT.**

Payment for agency services must be in accordance with rates established by the Department.

(3-19-07)

~~657.—699. (RESERVED).~~

**CHILDREN'S HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN  
OPTION  
(Sections 660 through 669)**

**660. CHILDREN'S HOME AND COMMUNITY BASED SERVICES (HCBS) STATE  
PLAN OPTION.**

In accordance with 1915i of the Social Security Act, the Department will pay for home and community based services provided by individuals or agencies that have entered into a provider agreement with the Department. Services provided by a developmental disabilities agency to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the

Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements. ( )

**661. CHILDREN'S HCBS STATE PLAN OPTION; DEFINITIONS.**

For the purposes of these rules, *the definitions in Section 521 of these rules apply. Additionally, the following terms apply to the Children's Home and Community Based Services State Plan Option.* ( )

**01. Agency.** A developmental disabilities agency (DDA) as defined in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ( )

**02. Annual.** Every three hundred sixty-five (365) days except during a leap year which equals three hundred sixty-six (366) days. ( )

**03. Clinical Supervisor.** *The professional responsible for the supervision of DDA staff as outlined in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)."* ( )

**04. Community.** Natural, integrated environments outside of the home, school, or DDA center-based settings. ( )

**05. Developmental Disabilities Agency (DDA).** A DDA is an agency that is: ( )

**a.** A type of developmental disabilities facility, as defined in Section 39-4604(7), Idaho Code, that is non-residential and provides services on an outpatient basis; ( )

**b.** Certified by the Department to provide home and community based services to people with developmental disabilities, in accordance with these rules; ( )

**c.** A business entity, open for business to the general public; and ( )

**d.** Primarily organized and operated to provide home and community based services and the corresponding assessments to people with developmental disabilities. DDA services include evaluations, diagnostic, treatment, and support services that are provided on an outpatient basis to persons with developmental disabilities and may be community-based, home-based, or center-based in accordance with the requirements of this chapter. ( )

**06. Home and Community Based Services State (HCBS) Plan Option.** The federal authority under section 1915(i) of the Social Security Act that allows a state to provide through a state plan amendment, medical assistance for home and community-based services for elderly and individuals with disabilities, without determining that without the provision of services the individuals would require institutional level of care. ( )

**07. Human Services Field.** *A particular area of academic study in health care, social services, education, behavioral science or counseling.* ( )

**08. Integration.** The process of promoting a life for individuals with developmental

disabilities that is as much as possible like that of other citizens of the community, including living in the community and having access to community resources. A further goal of this process is to enhance the social image and personal competence of individuals with developmental disabilities. ( )

**09. Paraprofessional.** *A person qualified to provide direct support services which include respite and habilitative supports.* ( )

**10. Professional.** *A person qualified to provide direct intervention services which include habilitative intervention, therapeutic consultation, family education, family training, interdisciplinary training, and crisis intervention.* ( )

**11. Support Services.** *Support services may provide supervision for a participant, as well as may provide assistance to a participant by facilitating integration into the community.* ( )

**662. CHILDREN'S HCBS STATE PLAN OPTION: PARTICIPANT ELIGIBILITY.** *Children's Home and Community Based State Plan Option eligibility will be determined by the Department as described in Section 520 of these rules. HCBS state plan option participants must meet the following requirements:* ( )

**01. Age of Participants.** *Participants eligible to receive children's HCBS must be birth through seventeen (17) years of age.* ( )

**02. Eligibility Determinations.** *The Department must determine that prior to receiving children's HCBS state plan option services, an individual must be determined to have a developmental disability under Sections 500 through 506 of these rules and Section 66-402, Idaho Code, and have a demonstrated need for Children's HCBS state plan option services.* ( )

**03. Financial Eligibility.** *The Department must determine that prior to receiving children's HCBS state plan option services, the individual is in an eligibility group covered under the Medicaid State plan, and meets one (1) of the following criteria:* ( )

**a.** *Has an income that does not exceed one hundred fifty percent (150%) of the Federal Poverty Level (FPL); or* ( )

**b.** *Has an income that does not exceed three hundred percent (300%) of the Supplemental Security Income (SSI) Federal benefit rate (FBR), and is eligible for, but does not have to be enrolled in, HCBS under a 1915(c), (d), or (e) waiver, or 1115 demonstration program.* ( )

**663. CHILDREN'S HCBS STATE PLAN OPTION: COVERAGE AND LIMITATIONS.** *All children's home and community based services must be identified on a plan of service developed by the family-centered planning team, including the plan developer, and must be recommended by a physician or other practitioner of the healing arts. The following services are reimbursable when provided in accordance with these rules:* ( )

**01. Respite.** *Respite provides supervision to the participant on an intermittent or short-*

term basis because of the need for relief of the primary unpaid caregiver. Respite is available in response to a family emergency or crisis, or may be used on a regular basis to provide relief to the caregiver. Respite may be provided in the participant's home, the private home of the respite provider, a DDA, or in the community. Payment for respite services are not made for room and board. ( )

**a.** Respite must only be offered to participants living with an unpaid caregiver who requires relief. ( )

**b.** Respite cannot exceed fourteen (14) consecutive days. ( )

**c.** Respite must not be provided at the same time other Medicaid services are being provided. ( )

**d.** Respite must not be provided on a continuous, long-term basis as a daily service that would enable an unpaid caregiver to work. ( )

**e.** The respite provider must not use restraints on participants, other than physical restraints in the case of an emergency. Physical restraints may be used in an emergency to prevent injury to the participant or others, and must be documented in the participant's record. ( )

**f.** When respite is provided as group respite, the following applies: ( )

**i.** When group respite is center-based, there must be a minimum of one (1) qualified staff providing direct services to every six (6) participants. As the number and severity of the participants with functional impairments or behavioral issues increases, the staff-to-participant ratio must be adjusted accordingly. ( )

**ii.** When group respite is community-based, there must be a minimum of one (1) qualified staff providing direct services to every three (3) participants. As the number and severity of the participants with functional impairments or behavioral issues increases, the staff-to-participant ratio must be adjusted accordingly. ( )

**g.** Respite cannot be provided as group- or center-based respite when delivered by an independent respite provider. ( )

**h.** For Act Early waiver participants, the cost of respite services cannot exceed ten (10) percent of the child's individualized budget amount to ensure the child receives the recommended amount of intervention based on evidence-based research. ( )

**02. Habilitative Supports.** Habilitative Supports provides assistance to a participant with a disability by facilitating the participant's independence and integration into the community. This service provides an opportunity for participants to explore their interests, practice skills learned in other therapeutic environments, and learn through interactions in typical community activities. Integration into the community enables participants to expand their skills related to activities of daily living and reinforces skills to achieve or maintain mobility, sensory-motor, communication, socialization, personal care, relationship building, and participation in leisure and community activities. Habilitative Supports must: ( )

**a.** Only be provided in community settings and have integration into the community as an identified goal on the plan of service; ( )

**b.** Not supplant services provided in school or therapy, or supplant the role of the primary caregiver; ( )

**c.** Ensure the participant is *involved* in age-appropriate activities and is engaging with typical peers *according to the ability of the participant*; and ( )

**d.** Have a minimum of one (1) qualified staff providing direct services to every three (3) participants when provided as group habilitative supports. As the number and severity of the participants with functional impairments increases, the staff participant ratio shall be adjusted accordingly. ( )

**03. Family Education.** Family education is professional assistance to families to help them better meet the needs of the participant. It offers education to the parent or legal guardian that is specific to the individual needs of the family and child as identified on the plan of service. Family education is delivered to families to provide an orientation to developmental disabilities and to educate families on generalized strategies for behavioral modification and intervention techniques specific to their child's diagnoses. ( )

**a.** Family education may also provide assistance to the parent or legal guardian in educating other unpaid caregivers regarding the needs of the participant. ( )

**b.** The family education providers must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. ( )

**c.** Family education may be provided in a group setting not to exceed *five (5) participants' families*. ( )

**04. Family-Directed Community Supports.** *Families of participants eligible for the children's home and community based state plan option may choose to direct their individualized budget rather than receive the traditional services described in Subsections 663.01 through 663.03 of this rule when the participant lives at home with his parent or legal guardian.* The requirements for this option are outlined in IDAPA 16.03.13 "Consumer-Directed Services." ( )

**05. Limitations.** ( )

**a.** HCBS state plan option services are *limited by the participant's individualized budget amount*. ( )

**b.** For the children's HCBS state plan option services listed in Subsections 663.01, 663.02, and 663.04 of this rule, the following are excluded for Medicaid payment: ( )

**i.** Vocational services; and ( )

**ii.** Educational services. ( )

**664. CHILDREN'S HCBS STATE PLAN OPTION: PROCEDURAL REQUIREMENTS.**

**01. General Requirements for Program Documentation.** The provider must maintain records for each participant served. Each participant's record must include documentation of the participant's involvement in and response to the services provided. For each participant, the following program documentation is required: ( )

**a.** Direct service provider information that includes written documentation of the service provided during each visit made to the participant, and contains, at a minimum, the following information: ( )

i. Date and time of visit; and ( )

ii. Intervention and support services provided during the visit; and ( )

iii. A statement of the participant's response to the service; and ( )

iv. Length of visit, including time in and time out; and ( )

v. Specific place of service. ( )

vi. A copy of the above information will be maintained by the independent provider or DDA. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. ( )

**02. Habilitative Supports Documentation.** In addition to the general requirements listed in Subsection 664.01 of this rule, the following must be completed: ( )

**a.** On a monthly basis, the habilitative support staff must complete a summary of the participant's response to the support service and submit the monthly summary to the clinical supervisor. ( )

**b.** The clinical supervisor reviews the summary on a monthly basis and when recommendations for changes to the type and amount of support are identified, submits the recommendations to the plan developer. ( )

**03. Family Education Documentation.** In addition to the general requirements listed in Subsection 664.01 of this rule, the DDA must survey the parent or legal guardian's satisfaction of the service immediately following a family education session. ( )

**04. Reporting Requirements.** The clinical supervisor must complete at a minimum, six- (6) month and annual provider status reviews for habilitative support services provided. These provider status reviews must be completed more frequently, when so required on the plan of service. ( )

**a.** Documentation of the six- (6) month and annual reviews must be submitted to the plan monitor. ( )

- b. The provider must use Department-approved forms for provider status reviews. ( )*

**665. CHILDREN'S HCBS STATE PLAN OPTION: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of HCBS state plan option services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. ( )

**01. Respite.** Respite services may be provided by an agency that is certified as a DDA and is capable of supervising the direct services provided, or by an independent respite provider. An independent respite provider is an individual who has entered into a provider agreement with the Department. Providers of respite services must meet the following minimum qualifications: ( )

- a. Must be at least sixteen (16) years of age when employed by a DDA; or ( )*
- b. Must be at least eighteen (18) years of age and be a high school graduate, or have a GED, to act as an independent respite provider; and ( )*
- c. Meet the qualifications prescribed for the type of services to be rendered, or must be an individual selected by the participant, the family, or the participant's guardian; and ( )*
- d. Have received instructions in the needs of the participant who will be provided the service; and ( )*
- e. Demonstrate the ability to provide services according to a plan of service; and ( )*
- f. Must satisfactorily complete a criminal history background check in accordance with IDAPA 16.05.06 "Criminal History and Background Checks"; and ( )*
- g. When employed by a DDA, must be certified in CPR and first aid in accordance with the general training requirements under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)." Independent respite providers must be certified in CPR and first aid prior to delivering services, and must maintain current certification thereafter. ( )*

**02. Habilitative Support Staff.** Habilitative supports must be provided by an agency certified as a DDA with staff who are capable of supervising the direct services provided. Providers of habilitative supports must meet the following minimum qualifications: ( )

- a. Must be at least eighteen (18) years of age; ( )*
- b. Must be a high school graduate or have a GED; ( )*
- c. Have received instructions in the needs of the participant who will be provided the service; ( )*



- d.** Demonstrate the ability to provide services according to a plan of service; ( )
- e.** Must have six (6) months supervised experience working with children with developmental disabilities. This can be achieved in the following ways: ( )
- i.** Have previous work experience gained through paid employment, university practicum experience, or internship; or ( )
- ii.** Have on-the-job supervised experience gained through employment at a DDA with increased supervision. Experience is gained by completing at least six (6) hours of job shadowing prior to the delivery of direct support services, and a minimum of weekly face-to-face supervision with the clinical supervisor for a period of six (6) months while delivering services. ( )
- f.** Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide habilitative supports. ( )
- g.** In addition to the habilitative support qualifications listed in Subsections 665.02.a. through f. of this rule, habilitative support staff serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: ( )
- i.** Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) semester credits from an accredited college or university in child development, special education, or closely-related coursework; or ( )
- ii.** Have three (3) years of documented experience providing care to infants, toddlers, or children less than five (5) years of age with developmental delays or disabilities under the supervision of a child development professional, certified educator, licensed therapist, or Developmental Specialist. ( )
- 03. Family Education.** Family education must be provided by an agency certified as a DDA with staff who are capable of supervising the direct services provided. Providers of family education must meet the following minimum qualifications: ( )
- a.** Must hold at least a bachelor's degree in a human services field from a nationally-accredited university or college, and has: ( )
- i.** One (1) year experience providing care to children with developmental disabilities; ( )
- ii.** Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide family education; or ( )
- b.** Individuals working as Developmental Specialists for children ages birth through three (3) or three (3) through seventeen (17), and individuals certified as Intensive Behavioral Interventionist professionals prior to July 1, 2011, are qualified to provide family education until June 30, 2013. The individual must meet the requirements of the Department-approved

competency coursework by June 30, 2013, to maintain his certification. ( )

c. Each professional providing family education services must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. If the individual has not completed the required training during any yearly training period, he may not provide family education services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to any training-deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period. ( )

04. Family Education for Children Birth to Three. In addition to the family education qualifications listed in Subsections 665.03.a. through c. of this rule, family education staff serving infants and toddlers from birth to three (3) years of age must have a minimum of two hundred forty (240) hours of professionally-supervised experience with young children who have developmental disabilities and one (1) of the following: ( )

a. An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or ( )

b. A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate; or ( )

c. A bachelor's or master's degree in special education, elementary education, speech-language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content: ( )

i. Promotion of development and learning for children from birth to three (3) years; ( )

ii. Assessment and observation methods for developmentally appropriate assessment of young children; ( )

iii. Building family and community relationships to support early interventions;( )

iv. Development of appropriate curriculum for young children, including IFSP and IEP development; ( )

v. Implementation of instructional and developmentally effective approaches for early learning, including strategies for children who are medically fragile and their families; and ( )

vi. Demonstration of knowledge of policies and procedures in special education and early intervention and demonstration of knowledge of exceptionalities in children's development.

( )

d. Electives closely related to the content under Subsection 665.04.c.iii. of this rule may be approved by the Department with a recommendation from an institution of higher education. ( )

e. Developmental specialists who possess a bachelor's or master's degree listed above under Subsection 665.04.c.ii. of this rule, have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services in accordance with their approved, conditional hiring agreement. ( )

f. When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage of such qualified personnel to meet service needs in a specific geographic area: ( )

i. The Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individual's approved plan to meet the required standard within three (3) years of being hired. ( )

ii. Satisfactory progress will be determined on an annual review by the Department. ( )

iii. Individuals who have an approved plan for completion of twenty (20) semester credits in EC/ECSE prior to July 1, 2005, will be allowed to continue providing services so long as they demonstrate satisfactory progress on the plan and complete the requirements on the plan within three (3) years of their date of hire. ( )

**05. Requirements for Clinical Supervision.** All DDA services must be provided under the supervision of a clinical supervisor. The clinical supervisor must meet the qualifications to provide habilitative intervention as defined in Section 685 of these rules. Clinical supervisor(s) are professionals employed by a DDA on a continuous and regularly scheduled basis. ( )

a. The clinical supervisor is responsible for the oversight and supervision of service and support elements of the agency, including face-to-face supervision of agency staff providing direct services. ( )

b. The clinical supervisor must observe and review the direct services performed by all paraprofessional and professional staff on a monthly basis, or more often as necessary, to ensure staff demonstrate the necessary skills to correctly provide the services and support. ( )

c. Each DDA must employ an adequate number of clinical supervisors to ensure quality service delivery and participant satisfaction. ( )

**06. Requirements for Collaboration.** Providers of home and community based services must coordinate with the family-centered planning team as specified on the plan of service. ( )

**07. Requirements for Quality Assurance.** Providers of children's home and community based state plan option services must demonstrate high quality of services through an internal quality assurance review process. ( )

**08. DDA Services.** In order for a DDA to provide respite, habilitative supports, and family education the DDA must be certified to provide support services. Each DDA is required to provide habilitative supports. ( )

**666. CHILDREN'S HCBS STATE PLAN OPTION: PROVIDER REIMBURSEMENT.**

**01. Reimbursement.** *The statewide reimbursement rate for children's HCBS state plan option services listed in Subsections 663.01 through 663.03 of these rules was derived by using Bureau of Labor Statistics mean wage for the direct care staff providing the service, adjusted for employment-related expenditures, program-related costs, and general and administrative costs based on a cost survey as described in Subsection 666.02 of this rule. Reimbursement rates are set at a percentage of the statewide target reimbursement rate. The Department will take into consideration the factors of efficiency, economy, quality of care, and access to care when determining rates.* ( )

**02. Cost Survey.** *The Department will conduct a cost survey every five (5) years from a statistically appropriate number of provider association representatives in order to obtain cost data for employment-related expenditures, program-related costs, and general and administrative costs.* ( )

**03. Claim Forms.** Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. ( )

**04. Rates.** The reimbursement rates calculated for children's HCBS include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the participant's home or other service delivery location when the participant is not being provided transportation. ( )

**667. -- 679. (RESERVED).**

**CHILDREN'S WAIVER SERVICES**  
**(Sections 680 through 699)**

**680. CHILDREN'S WAIVER SERVICES.**

Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible children to prevent unnecessary institutional placement, provide for the greatest degree of independence possible, enhance the quality of life, encourage individual choice, and achieve and maintain community integration. For a participant to be eligible, the Department must find that the participant requires services due to a developmental disability that impairs his mental or physical function or independence, is capable of being maintained safely and effectively in a non-institutional setting, and would, in the absence of such services, need to reside in an ICF/ID.

( )

**681. CHILDREN'S WAIVER SERVICES: DEFINITIONS.**

*For the purposes of Sections 680 through 686 of these rules, the following terms are used as defined below; in addition, the definitions in Sections 521 and 661 of these rules apply.* ( )

**01. Crisis.** An unanticipated event, circumstance, or life situation that places a participant at risk of at least one of the following: ( )

**a. Hospitalization;** ( )

**b. Loss of housing;** ( )

**c. Loss of employment;** ( )

**d. Incarceration; or** ( )

**e. Physical harm to self or others, including family altercation or psychiatric relapse.** ( )

**02. Intervention Services.** Intervention services include outcome-based therapeutic services, professional consultation services, and education and training for families caring for participants with developmental disabilities. ( )

**03. Objective.** A behavioral outcome statement developed to address a particular need identified for a participant. An objective is written in measurable terms that specify a target date for completion, no longer than one (1) year in duration, and include criteria for successful attainment of the objective. ( )

**04. Probe.** A probe is data gathered on an intermittent basis, after a baseline is established, to measure a participant's level of independent performance as related to an identified objective. ( )

**05. Program Implementation Plan.** A plan that details how intervention goals from the plan of service will be accomplished. ( )

**06. Specific Skill Assessment.** A type of assessment used to determine the baseline or the need for further supports or intervention for the discipline area being assessed. ( )

**07. Telehealth.** Telehealth is an electronic real-time synchronized audio-visual contact between a consultant and participant related to the treatment of the participant. The consultant and participant interact as if they were having a face-to-face service. ( )

**08. Treatment Fidelity.** Accurately and consistently administering a program or intervention from a manual, protocol, or model. ( )

**682. CHILDREN'S WAIVER SERVICES: ELIGIBILITY.**

Waiver eligibility will be determined by the Department as described in Section 522 of these

rules. Children's waiver participants must meet the following requirements: ( )

**01. Age of Participants.** The following waiver programs are available for children: ( )

**a. Children's DD Waiver.** Children's DD waiver participants must be birth through seventeen (17) years of age. ( )

**b. Act Early Waiver.** Act Early waiver participants must be three (3) through six (6) years of age. ( )

**02. Eligibility Determinations.** The Department must determine that: ( )

**a. The participant would qualify for ICF/ID level of care as set forth in Section 584 of these rules, if the waiver services listed in Section 683 of these rules were not made available; and** ( )

**b. The participant could be safely and effectively maintained in the requested or chosen community residence with appropriate waiver services. This determination must: be made by a team of individuals with input from the family-centered planning team. Prior to any denial of services, it must be determined by the plan developer that services to correct the concerns of the team are not available.** ( )

**c. The average annual cost of waiver services and other medical services to participants would not exceed the average annual cost to Medicaid of ICF/ID care and other medical costs.** ( )

**d. Following the approval by the Department for services under the waiver, the participant must receive and continue to receive a waiver service as described in these rules. A participant who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program.** ( )

**03. Additional Act Early Waiver Requirements.** In addition to the requirements listed in Subsections 682.01 and 682.02 of this rule, a participant must have the following characteristics to qualify for Act Early waiver services: ( )

**a. An autism spectrum diagnosis; or** ( )

**b. Self-injurious, aggressive, or severely maladaptive behavior as evidenced by a General Maladaptive Index score of minus twenty-two (-22) or below on the Scales of Independent Behavior - Revised (SIB-R) or other behavioral assessment indicators identified by the Department and a severe deficit, defined as having a composite full scale functional age equivalency of fifty percent (50%) or less of the participant's chronological age.** ( )

**04. Children's Waiver Eligible Participants.** A participant who is determined by the Department to be eligible for services under the children's waivers may elect not to use waiver services, but may choose admission to an ICF/ID. ( )

**05. Home and Community-Based Waiver Participant Limitations.** The number of Medicaid participants to receive waiver services under the children's waivers for participants with developmental disabilities will be limited to the projected number of users contained in the Department's approved waiver. Individuals who apply for waiver services after the waiver maximum has been reached will be placed on a waiting list and will have their applications processed after June 30th of each new waiver year. ( )

**683. CHILDREN'S WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

All children's DD waiver services must be identified on a plan of service developed by the family-centered planning team, including the plan developer, *and must be recommended by a physician or other practitioner of the healing arts.* In addition to the children's home and community based state plan option services described in Section 663 of these rules, the following services are available for waiver eligible participants and are reimbursable services when provided in accordance with these rules: ( )

**01. Family Training.** Family training is professional one-on-one (1 on 1) instruction to families to help them better meet the needs of the waiver participant receiving intervention services. ( )

**a.** Family training is limited to training in the implementation of intervention techniques as outlined in the plan of service. ( )

**b.** Family training must be provided to the participant's parent or legal guardian when the participant is present. ( )

**c.** The family training provider must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. ( )

**d.** The parent or legal guardian of the waiver participant is required to participate in family training when the participant is receiving habilitative interventions. The following applies for each waiver program: ( )

**i.** For participants enrolled in the Children's DD Waiver, the amount, duration, and frequency of the training must be determined by the family-centered planning team and the parent or legal guardian, and must be listed as a service on the plan of service. ( )

**ii.** For participants enrolled in the Act Early Waiver, the parent or legal guardian will be required to be present and actively participate during the intervention service session for at least twenty percent (20%) of the intervention time provided to the child. ( )

**02. Interdisciplinary Training.** Interdisciplinary training is professional instruction to the direct service provider. Interdisciplinary training must only be provided during the provision of a support or intervention service. Interdisciplinary training is provided to assist the direct provider to meet the needs of the waiver participant. ( )

**a.** Interdisciplinary training includes: ( )

**i.** Health and medication monitoring; ( )

- ii. Positioning and transfer; ( )
- iii. Intervention techniques; ( )
- iv. Positive Behavior Support; ( )
- v. Use of equipment; ( )
- b.** Interdisciplinary training must only be provided to the direct service provider when the participant is present. ( )
- c.** The interdisciplinary training provider must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. ( )
- d.** Interdisciplinary training between a habilitative interventionist and a therapeutic consultant is not a reimbursable service. ( )
- e.** Interdisciplinary training between employees of the same discipline is not a reimbursable service. ( )

**03. Habilitative Intervention Evaluation.** The purpose of the habilitative intervention evaluation is to guide the *formation of developmentally-appropriate* objectives and intervention strategies related to goals identified through the family-centered planning process. The habilitative interventionist must complete an evaluation prior to the initial provision of habilitative intervention services. The evaluation must include: ( )

- a.** Specific skills assessments for deficit areas identified through the eligibility assessment; ( )
- b.** Functional behavioral *analysis*; ( )
- c.** Review of all assessments and relevant histories provided by the plan developer;  
and ( )
- d.** Clinical Opinion. Professional summary that interprets and integrates the results of the testing. This summary includes functional, developmentally appropriate recommendations to guide treatment. ( )

**04. Habilitative Intervention.** Habilitative intervention services must be consistent, aggressive, and continuous and are provided to improve a child's *functional skills* and *minimize* problem behavior. Services include individual or group behavioral interventions and skill development activity. Habilitative intervention must be based upon the well-known and widely regarded principles of evidence-based treatment. Evidence-based treatment (EBT) refers to the use of mental and behavioral health interventions for which systematic empirical research has provided evidence of statistically significant effectiveness as treatments for specific problems. As "promising practices" meet statistically significant effectiveness, they could be included as



approved approaches. ( )

**a.** Habilitative intervention must be provided to meet the intervention needs of the participant by developing adaptive skills for all participants, and addressing maladaptive behaviors for participants who exhibit them. ( )

**i.** When goals to address maladaptive behavior are identified on the plan of service, the intervention must include the development of replacement behavior rather than merely the elimination or suppression of maladaptive behavior that interferes with the child's overall general development, community, and social participation. ( )

**ii.** When goals to address skill development are identified on the plan of service, the intervention must provide for the acquisition of skills that are functional. ( )

**b.** Habilitative intervention must be provided in the participant's home or community setting, and in addition may be provided in a center-based setting. ( )

**c.** Group intervention may be provided in the community and center. When habilitative intervention is provided as group intervention, the following applies: ( )

**i.** There must be a minimum of one (1) qualified staff providing direct services for every three (3) participants. As the number and severity of the participants with functional impairments or behavioral issues increases, the staff participant ratio must be adjusted accordingly. ( )

**ii.** When group intervention is community-based, the child must be integrated in the community in a natural setting with typically developing peers. ( )

**iii.** Group intervention must be directly related to meeting the needs of the child, and be identified as an objective in accordance with a plan of service goal. ( )

**05. Therapeutic Consultation.** Therapeutic consultation provides a higher level of expertise and experience to support participants who exhibit severe aggression, self-injury, and other dangerous behaviors. Therapeutic consultation is provided when a participant receiving habilitative intervention has been assessed as requiring a more advanced level of training and assistance based on the participant's complex needs. A participant requires therapeutic consultation when interventions are not demonstrating outcomes and it is anticipated that a crisis event may occur without the consultation service. ( )

**a.** The therapeutic consultant assists the habilitative interventionist by: ( )

**i.** Performing advanced assessments as necessary; ( )

**ii.** Developing and overseeing the implementation of a positive behavior support plan; ( )

**iii.** Monitoring the progress and coordinating the implementation of the positive behavioral support plan across environments; and ( )

- iv. Providing consultation to other service providers and families. ( )
- b. Telehealth resources may be used by a therapeutic consultant to provide consultation as appropriate and necessary. ( )
- c. Therapeutic consultation providers are subject to the following limitations: ( )

  - i. Therapeutic consultation cannot be provided as a direct intervention service.( )
  - ii. Participants must be receiving habilitative intervention services prior to accessing therapeutic consultation, with the exception of crisis situations. ( )
  - iii. Therapeutic consultation is limited to *eighteen* (18) hours per year per participant. ( )
  - iv. Therapeutic consultation must be prior authorized by the Department. ( )
- 06. Crisis Intervention.** Crisis intervention services provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience a psychological, behavioral, or emotional crisis. The need for crisis intervention must meet the definition of crisis in Section 681 of these rules. This service may provide training and staff development related to the needs of a participant, and also provides emergency back-up involving the direct support of the participant in crisis. *Children's crisis intervention services:* ( )

  - a. Are provided in the home and community. ( )
  - b. Are provided on a short-term basis typically not to exceed thirty (30) days. ( )
  - c. Cannot exceed fourteen (14) days of out-of-home placement. ( )
  - d. Must be prior authorized by the Department. ( )

    - i. Authorization for crisis intervention may be requested retroactively as a result of a crisis, defined in Section 681 of these rules, when no other means of support is available to the participant. In retroactive authorizations, the crisis intervention provider must submit a request for crisis intervention to the Department within seventy-two (72) hours of providing the service. ( )
    - ii. If staying in the home endangers the health and safety of the participant, the family, or both, the provider may request short-term out of home placement for the participant. Out of home placement must be prior authorized by the Department. ( )
    - e. Must use positive behavior interventions prior to and in conjunction with the implementation of any restrictive intervention. ( )
    - f. Telehealth resources may be used by a crisis interventionist to provide consultation

*in a crisis situation.* ( )

**07. Family-Directed Community Supports.** *Families of participants eligible for the children's DD waiver may choose to direct their individualized budget rather than receive the traditional services described in Subsections 683.01 through 683.06 of this rule when the participant lives at home with the parent or legal guardian. The requirements for selecting and participating in this option are outlined in IDAPA 16.03.13 "Consumer Directed Services." Act Early Waiver participants do not have the option to choose the family-directed services path. The Act Early Waiver is intended to be a more structured program that requires increased involvement from families, and ensures children receive an intense amount of services based on evidence-based research.* ( )

**08. Service limitations.** *Children's waiver services are subject to the following limitations:* ( )

**a. Place of Service Delivery.** *Waiver services may be provided in the participant's personal residence, community, or DDA. The following living situations are specifically excluded as a place of service for waiver services:* ( )

**i. Licensed skilled or intermediate care facilities, certified nursing facility (NF) or hospital; and** ( )

**ii. Licensed Intermediate Care Facility for persons with Intellectual Disabilities (ICF/ID); and** ( )

**iii. Residential Care or Assisted Living Facility;** ( )

**iv. Additional limitations to specific services are listed under that service definition.** ( )

**b. According to 42 CFR 440.180, Medicaid Waiver services cannot be used to pay for special education and related services that are included in a child's Individual Educational Plan (IEP) under the provisions of Individuals with Disabilities Education Improvement Act of 2004 (IDEA), that are otherwise available through a local educational agency.** ( )

**c. Children's waiver services are limited by the participant's individualized budget amount, excluding crisis intervention.** ( )

**d. For the children's waiver services listed in Subsections 683.01 through 683.07 of these rules, the following are excluded for Medicaid payment:** ( )

**i. Vocational services;** ( )

**ii. Educational services; and** ( )

**iii. Recreational services.** ( )

**684. CHILDREN'S WAIVER SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Authorization of Services on a Written Plan.** All children's waiver services must be identified on the plan of service and authorized by the Department. The plan of service must be reviewed by a plan developer at least every six (6) months or at a frequency determined by the family-centered planning team. ( )

**02. General Requirements for Program Documentation.** Children's waiver providers must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. For each participant the following program documentation is required: ( )

**a.** Direct service provider information which includes written documentation of each visit made or service provided to the participant, and will record at a minimum the following information: ( )

i. Date and time of visit; and ( )

ii. Services provided during the visit; and ( )

iii. A statement of the participant's response to the service, including any changes in the participant's condition; and ( )

iv. Length of visit, including time in and time out; and ( )

v. Specific place of service. ( )

**b.** A copy of the above information will be maintained by the independent provider or DDA. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. ( )

**03. Program Implementation Plan Requirements.** For each participant receiving intervention and family training services, the DDA must develop a program implementation plan to determine objectives to be included on the participant's required plan of service. ( )

**a.** All program implementation plan objectives must be related to a goal on the participant's plan of service. ( )

**b.** The program implementation plan must be written, implemented, and submitted to the plan developer within fourteen (14) days after the first day of ongoing programming and be revised whenever participant needs change. If the program implementation plan is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. ( )

**c.** The program implementation plan must be completed by the habilitative interventionist, and must include the following requirements: ( )

i. The participant's name. ( )

- ii. A baseline statement. ( )
- iii. Measurable, behaviorally-stated objectives that correspond to those goals or objectives previously identified on the required plan of service. ( )
- iv. Written instructions to the staff that may include curriculum, interventions, task analyses, activity schedules, type and frequency of reinforcement and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. ( )
- v. Identification of the type of environment(s) and specific location(s) where services will be provided. ( )
- vi. A description of the evidence-based treatment approach used for the service provided. ( )
- vii. When the child has a current positive behavior support plan, it must be incorporated into the program implementation plan. ( )
- viii. When interdisciplinary training is provided, identification of the type of interdisciplinary training and the objectives related to the training must be included on the program implementation plan. ( )
- ix. Target date for completion, not to exceed one (1) year. ( )
- x. The program implementation plan must be reviewed and approved by the DDA clinical supervisor, as indicated by signature, credential, and date on the plan. ( )

**04. Reporting Requirements.** The clinical supervisor must complete, at a minimum, six- (6) month and annual provider status reviews for habilitative intervention and family training services provided. These provider status reviews must be completed more frequently when so required on the plan of service. ( )

**a.** Documentation of the six (6) month and annual reviews must be submitted to the plan developer. ( )

**b.** The provider must use Department-approved forms for provider status reviews. ( )

**05. Provider Responsibility for Notification.** It is the responsibility of the service provider to notify the plan developer when any significant changes in the participant's condition, as defined by the family-centered planning team, are noted during service delivery. Such notification will be documented in the service record. ( )

**06. Records Maintenance.** When a participant leaves the waiver services program, the records will be retained by the Department as part of the participant's closed case record. Provider agencies will be responsible to retain their participant's records for five (5) years

following the date of service. ( )

**685. CHILDREN'S WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Family Training.** Providers of family training must meet the requirements for habilitative intervention providers defined in Subsections 685.03 and 685.04 of this rule. ( )

**02. Interdisciplinary Training.** Providers of interdisciplinary training must meet the following requirements: ( )

**a.** Occupational Therapist, as defined in Section 734 under IDAPA 16.03.09, "Medicaid Basic Plan Benefits"; ( )

**b.** Physical Therapist, as defined in Section 734 under IDAPA 16.03.09, "Medicaid Basic Plan Benefits"; ( )

**c.** Speech-Language Pathologist, as defined in Section 734 under IDAPA 16.03.09, "Medicaid Basic Plan Benefits"; ( )

**d.** Practitioner of the healing arts; ( )

**e.** Habilitative intervention provider as defined in Subsections 685.03 and 685.04 of this rule; or ( )

**f.** Therapeutic consultation provider as defined in Subsection 685.05 of this rule. ( )

**03. Habilitative Intervention.** Habilitative intervention must be provided by a DDA certified to provide both support and intervention services under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," and is capable of supervising the direct services provided. Providers of habilitative intervention must meet the following minimum qualifications: ( )

**a.** Must hold at least a bachelor's degree in a human services field from a nationally-accredited university or college; ( )

**b.** Must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. Experience must be gained through paid employment or university practicum experience or internship; ( )

**c.** Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide habilitative intervention; or ( )

**d.** Individuals working as Developmental Specialists for children age birth through three (3) or three (3) through 17, and individuals certified as Intensive Behavioral Intervention professionals prior to July 1, 2011, are qualified to provide habilitative intervention until June 30,

2013. The individual must meet the requirements of the Department-approved competency coursework by June 30, 2013 to maintain his certification. ( )

**04. Habilitative Intervention for Children Birth to Three.** In addition to the habilitative intervention qualifications listed in Subsections 685.04.a. through d. of this rule, habilitative intervention staff serving infants and toddlers from birth to three (3) years of age must have a minimum of two hundred forty (240) hours of professionally-supervised experience with young children who have developmental disabilities and one (1) of the following: ( )

**a.** An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or ( )

**b.** A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate; or ( )

**c.** A bachelor's or master's degree in special education, elementary education, speech-language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content: ( )

**i.** Promotion of development and learning for children from birth to three (3) years; ( )

**ii.** Assessment and observation methods for developmentally appropriate assessment of young children; ( )

**iii.** Building family and community relationships to support early interventions;( )

**iv.** Development of appropriate curriculum for young children, including IFSP and IEP development; ( )

**v.** Implementation of instructional and developmentally effective approaches for early learning, including strategies for children who are medically fragile and their families; and ( )

**vi.** Demonstration of knowledge of policies and procedures in special education and early intervention and demonstration of knowledge of exceptionalities in children's development. ( )

**d.** Electives closely related to the content under Subsection 685.04.c.iii. of this rule may be approved by the Department with a recommendation from an institution of higher education. ( )

**e.** Developmental specialists who possess a bachelor's or master's degree listed above under Subsection 685.04.c.ii. of this rule, have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3)

*years of age as of July 1, 2005, will be allowed to continue providing services in accordance with their approved, conditional hiring agreement.* ( )

***f.** When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage of such qualified personnel to meet service needs in a specific geographic area:* ( )

*i. The Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individual's approved plan to meet the required standard within three (3) years of being hired.* ( )

*ii. Satisfactory progress will be determined on an annual review by the Department.* ( )

*iii. Individuals who have an approved plan for completion of twenty (20) semester credits in EC/ECSE prior to July 1, 2005, will be allowed to continue providing services so long as they demonstrate satisfactory progress on the plan and complete the requirements on the plan within three (3) years of their date of hire.* ( )

**05. Therapeutic Consultation.** Therapeutic consultation may be provided by a DDA certified to provide both supports and intervention services under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)," or by an independent Medicaid provider under agreement with the Department. Providers of therapeutic consultation must meet the following minimum qualifications: ( )

**a.** Doctoral or Master's degree in psychology, education, applied behavioral analysis, or have a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and ( )

**b.** Two (2) years relevant experience in designing and implementing comprehensive behavioral therapies for children with DD and challenging behavior. ( )

**c.** Therapeutic consultation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**d.** Therapeutic consultation providers employed by a DDA must be certified in CPR and first aid in accordance with the general training requirements under IDAPA 16.03.21 "Developmental Disabilities Services (DDA)." Independent therapeutic consultation providers must be certified in CPR and first aid prior to delivering services, and must maintain current certification thereafter. ( )

**06. Crisis Intervention.** Crisis intervention may be provided by a DDA certified to provide support and intervention services under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)," or by an independent Medicaid provider under agreement with the Department.



Providers of crisis intervention must meet the following minimum qualifications: ( )

**a.** *Crisis Intervention professionals must meet the minimum therapeutic consultation provider qualifications described in Subsection 685.04 of this rule.* ( )

**b.** *Emergency intervention technician providers must meet the minimum habilitative support provider qualifications described under Subsection 665.02 of these rules.* ( )

**c.** *Crisis intervention providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks."* ( )

**07. Continuing Training Requirements for Professionals.** *Each professional providing waiver services must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. If the individual has not completed the required training during any yearly training period, he may not provide waiver services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to any training-deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period.* ( )

**08. Requirements for Clinical Supervision.** *All DDA services must be provided under the supervision of a clinical supervisor. The clinical supervisor must meet the qualifications to provide habilitative intervention as defined in this rule. Clinical supervisor(s) are professionals employed by a DDA on a continuous and regularly scheduled basis.* ( )

**a.** *The clinical supervisor is responsible for the oversight and supervision of service and support elements of the agency, including face-to-face supervision of agency staff providing direct services.* ( )

**b.** *The clinical supervisor must observe and review the direct services performed by all paraprofessional and professional staff on a monthly basis, or more often as necessary, to ensure staff demonstrate the necessary skills to correctly provide the services and support.* ( )

**c.** *Each DDA must employ an adequate number of clinical supervisors to ensure quality service delivery and participant satisfaction.* ( )

**09. Requirements for Collaboration with Other Providers.** *Providers of waiver services must coordinate with the family-centered planning team as specified on the plan of service. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to ensure therapies provided in the DDA accommodate the participant's mental health needs and to ensure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant's mental health status.* ( )

**10. Requirements for Quality Assurance.** *Providers of children's waiver services must demonstrate high quality of services, including treatment fidelity, through an internal quality*

assurance review process. ( )

**11. DDA Services.** In order for a DDA to provide waiver services, the DDA must be certified to provide both support and intervention services. Each DDA is required to provide habilitative supports. When a DDA opts to provide habilitative intervention services, the DDA must also provide habilitative supports and family training. ( )

**686. CHILDREN'S WAIVER SERVICES: PROVIDER REIMBURSEMENT.**

**01. Reimbursement.** The statewide reimbursement rate for children's HCBS state plan option services listed in Subsections 683.01 through 683.06 of these rules was derived by using Bureau of Labor Statistics mean wage for the direct care staff providing the service, adjusted for employment-related expenditures, program-related costs, and general and administrative costs based on a cost survey as described in Subsection 686.02 of this rule. Reimbursement rates are set at a percentage of the statewide target reimbursement rate. The Department will take into consideration the factors of efficiency, economy, quality of care, and access to care when determining rates. ( )

**02. Cost Survey.** The Department will conduct a cost survey every five (5) years from a statistically appropriate number of provider association representatives in order to obtain cost data for employment-related expenditures, program-related costs, and general and administrative costs. ( )

**03. Claim Forms.** Provider claims for payment will be submitted on claim forms provided by or approved by the Department. Billing instructions will be provided by the Department. ( )

**04. Rates.** The reimbursement rates calculated for waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the participant's home or other service delivery location when the participant is not being provided transportation. ( )

**687. -- 699. (RESERVED).**

**ADULTS WITH DEVELOPMENTAL DISABILITIES WAIVER SERVICES**  
**(Sections 700 through 719)**

**700. ~~INDIVIDUALS~~ ADULTS WITH DEVELOPMENTAL DISABILITIES WAIVER SERVICES.**

Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible adult participants to prevent unnecessary institutional placement, provide for the greatest degree of independence possible, enhance the quality of life, encourage individual choice, and achieve and maintain community integration. For an adult participant to be eligible, the Department must find that the participant requires services due to a developmental disability that impairs his mental or physical function or independence, is capable of being maintained safely and effectively in a non-institutional setting, and would, in the absence of such services, need to reside in an ICF/ID. (3-29-10)( )

**701. (RESERVED).**

**702. ADULT DD WAIVER SERVICES: ELIGIBILITY.**

Waiver eligibility will be determined by the Department as described in Section 509 of these rules. The participant must be financially eligible for Medical Assistance as described in IDAPA 16.03.05, "Rules Governing Eligibility for Aid for the Aged, Blind, and Disabled (AABD)," Section 787. The cited chapter implements and is in accordance with the Financial Eligibility Section of the Idaho State Plan. In addition, waiver participants must meet the following requirements: (3-29-10)

**01. Age of Participants.** DD waiver participants must be eighteen (18) years of age or older. (3-29-10)

**02. Eligibility Determinations.** The Department must determine that: (3-19-07)

**a.** The participant would qualify for ICF/ID level of care as set forth in Section 584 of these rules, if the waiver services listed in Section 703 of these rules were not made available; and (3-19-07)

**b.** The participant could be safely and effectively maintained in the requested or chosen community residence with appropriate waiver services. This determination must: be made by a team of individuals with input from the person-centered planning team; and prior to any denial of services on this basis, be determined by the plan developer that services to correct the concerns of the team are not available. (3-19-07)

**c.** The average annual cost of waiver services and other medical services to the participant would not exceed the average annual cost to Medicaid of ICF/ID care and other medical costs. (7-1-06)

**d.** Following the approval by the Department for services under the waiver, the participant must receive and continue to receive a waiver service as described in these rules. A participant who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program. (3-19-07)

**03. Home and Community-Based Services Waiver Eligible Participants.** A participant who is determined by the Department to be eligible for services under the Home and Community Based Services Waivers for DD may elect not to utilize waiver services but may choose admission to an ICF/ID. (3-29-10)

**04. Processing Applications.** The participant's self-reliance staff will process the application in accordance with IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," as if the application was for admission to an ICF/ID, except that the self-reliance staff will forward potentially eligible applications immediately to the Department for review. The Medicaid application process cited above conforms to all statutory and regulatory requirements relating to the Medicaid application process. (3-19-07)

**05. Transmitted Decisions to Self-Reliance Staff.** The decisions of the Department

regarding the acceptance of the participants into the waiver program will be transmitted to the self-reliance staff. (3-19-07)

**06. Case Redetermination.** (3-19-07)

**a.** Financial redetermination will be conducted pursuant to IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." Medical redetermination will be made at least annually by the Department, or sooner at the request of the participant, the self-reliance staff, provider agency, or physician. The sections cited implement and are in accordance with Idaho's approved State Plan with the exception of deeming of income provisions. (3-19-07)

**b.** The redetermination process will assess the following factors: (3-19-07)

**i.** The participant's continued need and eligibility for waiver services; and (3-19-07)

**ii.** Discharge from the waiver services program. (3-19-07)

**07. Home and Community-Based Waiver Participant Limitations.** The number of Medicaid participants to receive waiver services under the home and community based waiver for developmentally disabled participants will be limited to the projected number of users contained in the Department's approved waiver. Individuals who apply for waiver services after the waiver maximum has been reached will be placed on a waiting list and will have their applications processed after September 30th for the DD waiver of each new waiver year. (3-29-10)

**703. ADULT DD WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Residential Habilitation.** Residential habilitation services which consist of an integrated array of individually-tailored services and supports furnished to eligible participants which are designed to assist them to reside successfully in their own homes, with their families, or alternate family homes. The services and supports that may be furnished consist of the following: (3-19-07)

**a.** Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

**i.** Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-19-07)

**ii.** Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

**iii.** Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety,

first aid, and emergency procedures; (3-19-07)

iv. Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities which are merely diversional or recreational in nature); (3-19-07)

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (3-19-07)

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. (3-19-07)

**b.** Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. (3-19-07)

**c.** Skills training to teach waiver participants, family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

**02. Chore Services.** Chore services which are heavy household maintenance and minor home repairs necessary to maintain the functional use of the home and to provide a clean, sanitary and safe environment. Chore activities include washing windows; moving heavy furniture and shoveling snow to provide safe access inside and outside the home; chopping wood when wood is the participant's primary source of heat; and tacking down loose rugs and flooring. These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer/agency or third party payer is capable of or responsible for their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-19-07)

**03. Respite.** Respite care services are those services provided on a short term basis because of the absence of persons normally providing non-paid care. Respite care services provided under this waiver will not include room and board payments. Respite care services are limited to participants who reside with non-paid caregivers. (3-19-07)

**04. Supported Employment.** Supported employment which is competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work. (3-19-07)

**a.** Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation will be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or IDEA. (3-19-07)

**b.** Federal Financial Participation (FFP) will not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-19-07)

**05. Transportation.** Transportation services which are services offered in order to enable waiver participants to gain access to waiver and other community services and resources required by the plan of service. This service is offered in addition to medical transportation required under 42 CFR 440.431.53 and transportation services offered under the State Plan, defined at 42 CFR 440.170(a), and must not replace them. Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge or public transit providers will be utilized. (3-19-07)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations which are those interior or exterior physical adaptations to the home, required by the waiver participant's plan of service, which are necessary to ensure the health, welfare, safety of the individual, or which enable the individual to function with greater independence in the home and without which, the waiver participant would require institutionalization. Such adaptations may include the installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. All services must be provided in accordance with applicable State or local building codes. Permanent environmental modifications are limited to modifications to a home rented or owned by the participant or the participant's family when the home is the participant's principal residence. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)

**07. Specialized Equipment and Supplies.** Specialized medical equipment and supplies which include devices, controls, or appliances, specified in the plan of service which enable participants to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. They also include items

necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. Items reimbursed with waiver funds must be in addition to any medical equipment and supplies furnished under the State Plan and must exclude those items which are not of direct medical or remedial benefit to the participant. All items must meet applicable standards of manufacture, design and installation. (3-19-07)

**08. Personal Emergency Response System.** Personal Emergency Response Systems (PERS) which may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical or environmental emergencies through the provision of communication connection systems. PERS are limited to participants who rent or own their home, who are alone for significant parts of the day, have no regular caretaker for extended periods of time and who would otherwise require extensive routine supervision. (3-19-07)

**09. Home Delivered Meals.** Home delivered meals which are designed to promote adequate waiver participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to participants who rent or own their own home, who are alone for significant parts of the day and have no regular caretaker for extended periods of time. (3-19-07)

**10. Skilled Nursing.** Nursing services are those intermittent nursing services or private duty nursing services which provide individual and continuous care listed in the plan of service which are within the scope of the Nurse Practice Act and are provided by a licensed professional (RN) nurse or licensed practical nurse (LPN) under the supervision of an RN, licensed to practice in Idaho. (3-19-07)

**11. Behavior Consultation/Crisis Management.** Behavior Consultation/Crisis Management services which provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

**12. Adult Day Care.** Adult Day Care is a supervised, structured day program, outside the home of the participant that offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. These activities need to be identified on the plan of service. Adult Day Care can not exceed thirty (30) hours per week either alone or in combination with developmental therapy, occupational therapy, or IBI. (3-19-07)

**a.** Services provided in a facility must meet the building and health standards identified in IDAPA 16.043.121, "Developmental Disabilities Agencies (DDA)." (3-19-07)( )

**b.** Services provided in a home must meet the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Home," and health standards identified in IDAPA 16.043.121, "Developmental Disabilities Agencies (DDA)." (3-19-07)( )

**13. Self Directed Community Supports.** Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, “Consumer Directed Services.” (3-19-07)

**14. Place of Service Delivery.** Waiver services may be provided in the participant's personal residence, a certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: (3-19-07)

- a.** Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)
- b.** Licensed Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID); and (3-19-07)
- c.** Residential Care or Assisted Living Facility. (3-19-07)
- d.** Additional limitations to specific services are listed under that service definition. (3-19-07)

**704. ADULT DD WAIVER SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Authorization of Services on a Written Plan.** All waiver services must be identified on the plan of service and authorized by the process described in Sections 507 through 520 of these rules. The plan of service must be reviewed by a plan monitor or targeted service coordinator at a frequency determined by the person-centered planning team, but at least every ninety (90) days. (3-19-07)

**02. Provider Records.** Three (3) types of record information will be maintained on all participants receiving waiver services: (3-19-07)

- a.** Direct Service Provider Information which includes written documentation of each visit made or service provided to the participant, and will record at a minimum the following information: (3-19-07)
  - i.** Date and time of visit; and (3-19-07)
  - ii.** Services provided during the visit; and (3-19-07)
  - iii.** A statement of the participant's response to the service, if appropriate to the service provided, including any changes in the participant's condition; and (3-19-07)
  - iv.** Length of visit, including time in and time out, if appropriate to the service provided. Unless the participant is determined by the Service Coordinator to be unable to do so, the delivery will be verified by the participant as evidenced by their signature on the service record. (3-19-07)



v. A copy of the above information will be maintained in the participant's home unless authorized to be kept elsewhere by the Department. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. (3-19-07)

b. The plan of service developed by the plan developer and the person-centered planning team must specify which services are required by the participant. The plan of service must contain all elements required by Subsection 704.01 of these rules and a copy of the most current plan of service must be maintained in the participant's home and must be available to all service providers and the Department. (3-19-07)

c. In addition to the plan of service, all providers, with the exception of chore, non-medical transportation, and enrolled Medicaid vendors, must submit a provider status review six (6) months after the start date of the plan of service and annually to the plan monitor as described in Sections 507 through 520 of these rules. (3-19-07)

**03. Provider Responsibility for Notification.** It is the responsibility of the service provider to notify the service coordinator or plan developer when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the service record. (3-19-07)

**04. Records Maintenance.** In order to provide continuity of services, when a participant changes service providers, plan developers, or service coordinators, all of the foregoing participant records will be delivered to and held by the Department until a replacement service provider, plan developer, or service coordinator is selected by the participant. When a participant leaves the waiver services program, the records will be retained by the Department as part of the participant's closed case record. Provider agencies will be responsible to retain their participant's records for five (5) years following the date of service. (3-19-07)

**705. ADULT DD WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-19-07)

**01. Residential Habilitation.** Residential habilitation services must be provided by an agency that is certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and is capable of supervising the direct services provided. Individuals who provide residential habilitation services in their own home must be certified by the Department as a certified family home and must be affiliated with a Residential Habilitation Agency. The Residential Habilitation Agency provides oversight, training, and quality assurance to the certified family home provider. Individuals who provide residential habilitation services in the home of the participant (supported living), must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements: (3-19-07)

- a. Direct service staff must meet the following minimum qualifications: (3-19-07)
  - i. Be at least eighteen (18) years of age; (3-19-07)

- ii. Be a high school graduate or have a GED or demonstrate the ability to provide services according to an plan of service; (3-19-07)
- iii. Have current CPR and First Aid certifications; (3-19-07)
- iv. Be free from communicable diseases; (3-19-07)
- v. Each staff person assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. Staff previously trained on assistance with medications by a licensed nurse but who have not completed this course must meet this requirement by July 1, 2007. (3-19-07)
- vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” (4-2-08)
- vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. (3-19-07)
- b.** All skill training for direct service staff must be provided by a Qualified Intellectual Disabilities Professional (QIDP) who has demonstrated experience in writing skill training programs. (3-19-07)
- c.** Prior to delivering services to a participant, direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-19-07)
  - i. Purpose and philosophy of services; (3-19-07)
  - ii. Service rules; (3-19-07)
  - iii. Policies and procedures; (3-19-07)
  - iv. Proper conduct in relating to waiver participants; (3-19-07)
  - v. Handling of confidential and emergency situations that involve the waiver participant; (3-19-07)
  - vi. Participant rights; (3-19-07)
  - vii. Methods of supervising participants; (3-19-07)
  - viii. Working with individuals with developmental disabilities; and (3-19-07)
  - ix. Training specific to the needs of the participant. (3-19-07)
- d.** Additional training requirements must be completed within six (6) months of

employment or affiliation with the residential habilitation agency and include at a minimum:  
(3-19-07)

i. Instructional techniques: Methodologies for training in a systematic and effective manner;  
(3-19-07)

ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors;  
(3-19-07)

iii. Feeding;  
(3-19-07)

iv. Communication;  
(3-19-07)

v. Mobility;  
(3-19-07)

vi. Activities of daily living;  
(3-19-07)

vii. Body mechanics and lifting techniques;  
(3-19-07)

viii. Housekeeping techniques; and  
(3-19-07)

ix. Maintenance of a clean, safe, and healthy environment.  
(3-19-07)

e. The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed.  
(3-19-07)

f. When residential habilitation services are provided in the provider's home, the provider's home must meet the requirements in IDAPA 16.03.19, "Rules Governing Certified Family Homes." Non-compliance with the certification process is cause for termination of the provider's provider agreement.  
(3-19-07)

**02. Chore Services.** Providers of chore services must meet the following minimum qualifications:  
(3-19-07)

a. Be skilled in the type of service to be provided; and  
(3-19-07)

b. Demonstrate the ability to provide services according to a plan of service.  
(3-19-07)

c. Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks."  
(4-2-08)

**03. Respite.** Providers of respite care services must meet the following minimum qualifications:  
(3-19-07)

a. Meet the qualifications prescribed for the type of services to be rendered or must be an individual selected by the waiver participant, the family or his guardian;  
(3-19-07)

- b.** Have received care giving instructions in the needs of the person who will be provided the service; (3-19-07)
- c.** Demonstrate the ability to provide services according to an plan of service; (3-19-07)
- d.** Have good communication and interpersonal skills and the ability to deal effectively, assertively and cooperatively with a variety of people; (3-19-07)
- e.** Be willing to accept training and supervision by a provider agency or the primary caregiver of services; and (3-19-07)
- f.** Be free of communicable diseases. (3-19-07)
- g.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**04. Supported Employment.** Supported Employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**05. Transportation.** Providers of transportation services must: (3-19-07)

- a.** Possess a valid driver's license; and (3-19-07)
- b.** Possess valid vehicle insurance. (3-19-07)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations services must: (3-19-07)

- a.** Be done under a permit, if required; and (3-19-07)
- b.** Demonstrate that all modifications, improvements, or repairs are made in accordance with local and state housing and building codes. (3-19-07)

**07. Specialized Equipment and Supplies.** Specialized Equipment and Supplies purchased under this service must: (3-19-07)

- a.** Meet Underwriter's Laboratory, FDA, or Federal Communication Commission standards where applicable; and (3-19-07)
- b.** Be obtained or provided by authorized dealers of the specific product where applicable. This may include medical supply businesses or organizations that specialize in the

design of the equipment. (3-19-07)

**08. Personal Emergency Response System.** Personal Emergency Response Systems (PERS) must demonstrate that the devices installed in waiver participants' homes meet Federal Communications Standards or Underwriter's Laboratory standards or equivalent standards. (3-19-07)

**09. Home Delivered Meals.** Services of Home Delivered Meals under this Subsection may only be provided by an agency capable of supervising the direct service and must: ~~(3-19-07)~~( )

**a.** Provide assurances that each meal meets one third (1/3) of the Recommended Dietary Allowance as defined by the Food and Nutrition Board of National Research Council or meet physician ordered individualized therapeutic diet requirement; (3-19-07)

**b.** Must provide assurances that the meals are delivered on time and demonstrate the ability to deliver meals at a minimum of three (3) days per week; (3-19-07)

**c.** Maintain documentation reflecting the meals delivered are nutritionally balanced and made from the highest U.S.D.A. Grade for each specific food served; (3-19-07)

**d.** Provide documentation of current driver's license for each driver; and (3-19-07)

**e.** Must be inspected and licensed as a food establishment by the District Health Department. (3-19-07)

**10. Skilled Nursing.** Nursing service providers must provide documentation of current Idaho licensure as a licensed professional nurse (RN) or licensed practical nurse (LPN) in good standing. (3-19-07)

**11. Behavior Consultation or Crisis Management.** Behavior Consultation or Crisis Management Providers must meet the following: (3-19-07)

**a.** Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (3-19-07)

**b.** Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (3-19-07)

**c.** Be a licensed pharmacist; or (3-19-07)

**d.** Be a Qualified Intellectual Disabilities Professional (QIDP). (3-19-07)

**e.** Emergency back-up providers must meet the minimum residential habilitation provider qualifications described under IDAPA 16.04.17, "Rules Governing Residential

Habilitation Agencies.” (3-19-07)

**f.** Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” (4-2-08)

**12. Adult Day Care.** Providers of adult day care services must be employed by or be affiliated with the residential habilitation agency that provides program coordination for the participant if the service is provided in a certified family home other than the participant's primary residence, be capable of supervising direct services, provide services as identified on the plan of service, provide care and supervision identified on the participant's residential habilitation plan, and must meet the following minimum qualifications: (3-19-07)

**a.** Demonstrate the ability to communicate and deal effectively, assertively, and cooperatively with a variety of people; (3-19-07)

**b.** Be a high school graduate, or have a GED or demonstrate the ability to provide services according to the plan of service; (3-19-07)

**c.** Be free from communicable disease; (3-19-07)

**d.** Adult day care providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks”; (4-2-08)

**e.** Demonstrate knowledge of infection control methods; and (3-19-07)

**f.** Agree to practice confidentiality in handling situations that involve waiver participants. (3-19-07)

**13. Service Supervision.** The plan of service which includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-19-07)

**706. ADULT DD WAIVER SERVICES: PROVIDER REIMBURSEMENT.**

**01. Fee-for-Service.** Waiver service providers will be paid on a fee-for-service basis based on the type of service provided as established by the Department. (3-19-07)

**02. Claim Forms.** Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (3-19-07)

**03. Rates.** The reimbursement rates calculated for waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the participant's home or other service delivery location when the participant is not being provided transportation. (3-19-07)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1003

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, Idaho Code; also House Bills 701 and 708 passed by the 2010 Legislature.

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

**The pending rule is being adopted as proposed. These rule changes implement legislative intent language in House Bills 701 and 708 passed by the 2010 Legislature regarding nursing facilities. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 263 through 272.](#)**

**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:

**Changes related to House Bill 701 will result in a reduction of \$193,000 to the state general fund. The total cost reduction is \$965,000 for state and federal funds combined.**

**Changes related to House Bill 708 will result in a cost reduction of \$1.09 million to the state general fund. Total cost reduction is \$5.4 million for state and federal funds combined. This cost reduction has already been incorporated into the Division of Medicaid's 2011 appropriation.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Robert Kellerman at (208) 364-1994.

DATED this 24th day of November, 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  
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**THIS NOTICE PUBLISHED WITH THE 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 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; also House Bills 701 and 708 passed by the 2010 legislature.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 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:

**Rule changes are being made in these rules to implement the legislative intent in House Bills 701 and 708 passed by the 2010 legislature. Rule changes for this docket include:**

- 1. Clarification of nursing facility coverage and limitations;**
- 2. Nursing facility inflation freeze;**
- 3. Nursing facility efficiency incentive;**
- 4. Nursing facility special rate payment offset clarification; and**
- 5. Incentive changes for Intermediate Care Facilities for the Mentally Retarded (ICF/MR).**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code:

**The Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs.**

**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:



Changes related to House Bill 701 will result in a reduction of \$193,000 to the state general fund (cost reduction of \$965,000 in total funds (state and federal combined)).

Changes related to House Bill 708 will result in a cost reduction of \$1.09 million to the state general fund (cost reduction of \$5.4 million in total funds (state and federal combined)).

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are being made to implement the legislative intent in H0701 and H0708 passed by the 2010 legislature.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Robert Kellerman at (208) 364-1994.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 13th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1003**

**039. ACCOUNTING TREATMENT.**

Generally accepted accounting principles, concepts, and definitions will be used except as otherwise specified. Where alternative treatments are available under GAAP, the acceptable treatment will be the one that most clearly attains program objectives. (3-19-07)

**01. Final Payment.** A final settlement will be made based on the reasonable cost of services as determined by audit, limited in accordance with other sections of this chapter. ~~In addition, an efficiency incentive will be allowed to low cost providers in accordance with the provisions of Section 296 of these rules.~~ (3-19-07)( )

**02. Overpayments.** As a matter of policy, recovery of overpayments will be attempted as quickly as possible consistent with the financial integrity of the provider. (3-19-07)

**03. Other Actions.** Generally, overpayment will result in two (2) circumstances: (3-19-07)

- a. If the cost report is not filed, the sum of the following will be due: (3-19-07)
  - i. All payments included in the period covered by the missing report(s). (3-19-07)
  - ii. All subsequent payments. (3-19-07)
- b. Excessive reimbursement or non-covered services may precipitate immediate audit and settlement for the period(s) in question. Where such a determination is made, it may be necessary that the interim reimbursement rate (IRR) will be reduced. This reduction will be designated to effect at least one (1) of the following: (3-19-07)
  - i. Discontinuance of overpayments (on an interim basis). (3-19-07)
  - ii. Recovery of overpayments. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. NURSING FACILITY: COVERAGE AND LIMITATIONS.**

An institution must provide, on a regular basis, health-related care and services to individuals; who because of their mental or physical condition require care and services above the level of room, board, and supervision. (3-19-07)

**01. Nursing Facility Care.** The minimum content of care and services for nursing facility patients must include the following: (3-19-07)

- a. Room and board; (3-19-07)
- b. Bed and bathroom linens; (3-19-07)
- c. Nursing care, including special feeding if needed; (3-19-07)
- d. Personal services; (3-19-07)
- e. Supervision as required by the nature of the patient's illness and duration of his stay in the nursing facility; ~~(3-19-07)~~( )
- f. Special diets as prescribed by a patient's physician; (3-19-07)
- g. All common medicine chest supplies ~~which do not require a physician's prescription~~ that are over-the-counter including ~~but not limited to~~ mouthwashes, analgesics, laxatives, emollients, burn ointments, first aid cream, protective creams and liquids, cough and cold preparations, and simple eye preparations; ~~(3-19-07)~~( )
- h. Dressings; (3-19-07)
- i. Administration of intravenous, subcutaneous, or intramuscular injections and

infusions, enemas, catheters, bladder irrigations, and oxygen; (3-19-07)

**j.** Application or administration of all drugs; (3-19-07)

**k.** All medical supplies including but not limited to gauzes, bandages, tapes, compresses, cottons, sponges, hot water bags, ice bags, disposable syringes, thermometers, cellucotton, incontinent supplies, or any other type of pads used to save labor or linen, and disposable gloves; ~~(3-19-07)~~( )

**l.** Social and recreational activities; and (3-19-07)

**m.** ~~Each i~~tems ~~which are~~ that is utilized by individual patients ~~but which are and is~~ reusable and expected to be available, such as bed rails, canes, crutches, walkers, wheel chairs, traction equipment, and other durable medical equipment. ~~(3-19-07)~~( )

**02. Skilled Services.** Skilled services include services which could qualify as either skilled nursing or skilled rehabilitative services, which include: (3-19-07)

**a.** Overall management and evaluation of the care plan. The development, management, and evaluation of a resident's care plan, based on the physician's orders, constitute skilled services when, in terms of the patient's physical or mental condition, such development, management, and evaluation necessitate the involvement of technical or professional personnel to meet his needs, promote his recovery, and assure his medical safety. This would include the management of a plan involving only a variety of personal care services where, in light of the patient's condition, the aggregate of such services necessitates the involvement of technical or professional personnel. Where the patient's overall condition would support a finding that his recovery and safety could be assured only if the total care he requires is planned, managed, and evaluated by technical or professional personnel, it would be appropriate to infer that skilled services are being provided. (3-19-07)

**b.** Observation and assessment of the resident's changing condition. When the resident's condition is such that the skills of a licensed nurse or other technical or professional person are required to identify and evaluate the patient's need for possible modification of treatment and the initiation of additional medical procedures until his condition is stabilized, such services constitute skilled services. (3-19-07)

**03. Direct Skilled Nursing Services.** Direct skilled nursing services include the following: (3-19-07)

**a.** Intravenous injections; intravenous feedings; intramuscular or subcutaneous injection required on more than one (1) shift; (3-19-07)

**b.** Nasopharyngeal feedings; (3-19-07)

**c.** Nasopharyngeal and tracheotomy aspiration; (3-19-07)

**d.** Insertion and sterile irrigation and replacement of catheters; (3-19-07)

- e. Application of dressings involving prescription medications or aseptic techniques; (3-19-07)
  - f. Treatment of extensive decubitus ulcers or other widespread skin disorders; (3-19-07)
  - g. Heat treatments which have been specifically ordered by a physician as part of treatment and which require observation by nurses to adequately evaluate the resident's progress; and (3-19-07)
  - h. Initial phases of a regimen involving administration of oxygen. (3-19-07)
- 04. Direct Skilled Rehabilitative Services.** Direct skilled rehabilitative services include the following: (3-19-07)
- a. Ongoing assessment of rehabilitation needs and potential, services concurrent with the management of a resident's care plan, including tests and measurements of range of motion, strength, balance, coordination, endurance, functional ability, activities of daily living, perceptual deficits, speech and language or hearing disorders; (3-19-07)
  - b. Therapeutic exercises or activities which, because of the type of exercises employed or the condition of the resident, must be performed by or under the supervision of a qualified physical therapist or occupational therapist to ensure the safety of the resident and the effectiveness of the treatment; (3-19-07)
  - c. Gait evaluation and training furnished by a physical or occupational therapist to restore function in a resident whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality; and (3-19-07)
  - d. Ultrasound, short-wave, and microwave therapy treatments by a licensed physical therapist. (3-19-07)
- 05. Other Treatment and Modalities.** Other treatment and modalities which include hot pack, hydroculator, infrared treatments, paraffin baths, and whirlpool, in cases where the resident's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures, or other complications, and the skills, knowledge, and judgement of a licensed physical therapist are required. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**257. NURSING FACILITY: DEVELOPMENT OF THE RATE.**

Nursing facility rates are prospective, with new rates effective July 1st of each year, and are recalculated annually with quarterly adjustments for case mix. The rate for a nursing facility is the sum of the cost components described in Subsection 257.04 through 257.09 of this rule. In no case will the rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is made as computed by the lower of costs or customary charges.

(5-8-09)

**01. Applicable Case Mix Index (CMI).** The Medicaid CMI used in establishing each facility's rate is calculated based on the most recent assessment for each Medicaid resident in the nursing facility on the first day of the month of the preceding quarter (for example, assessments as of April 1 are used to establish the CMI needed to establish rates for the quarter beginning July 1st). Facility-wide CMI is calculated based on the most recent assessment for all residents in the nursing facility. The CMI is recalculated quarterly and each nursing facility's rate is adjusted accordingly. A facility-wide CMI is also established each year by averaging four (4) calendar quarter CMIs for the cost reporting period from historical data to represent each fiscal quarter in the cost reporting period (for example, an October 1 CMI would represent the fiscal quarter ended September 30th). (3-19-07)

**02. Applicable Cost Data.** The cost data used in establishing the cost components of the rate calculation are from the audited or unaudited cost report which ended during the previous calendar year (for example, cost reports ending during the period from January 1, 1998 - December 31, 1998 are used in setting rates effective July 1, 1999). The draft audit of a cost report submitted by a facility will be issued by the Department no later than five (5) months after the date all information required for completion of the audit is filed with the Department. (3-19-07)

**03. Interim Rates.** Nursing facilities with unaudited cost reports are given an interim rate established by the Department until a rate is calculated based on an audited cost report. When audited data are available, a retroactive adjustment to the payment rate is made through the calculation of the finalized rate. (3-19-07)

**04. Direct Care Cost Component.** The direct care cost component of a nursing facility's rate is determined as follows: (3-19-07)

**a.** The direct care per diem cost limit applicable to the rate period for a nursing facility type (free-standing and urban hospital-based nursing facility or rural hospital-based nursing facility) is identified. The identified direct care cost limit is divided by the statewide average CMI for the cost reporting period, and then multiplied by the nursing facility's facility-wide CMI for the cost reporting period to derive the adjusted direct care per diem cost limit. (3-19-07)

**b.** The adjusted direct care per diem cost limit is compared to the nursing facility's inflated direct care per diem costs. The lower of the two (2) amounts is then case mix adjusted. (3-19-07)

**i.** If the adjusted direct care per diem cost limit is lower, the adjusted limit is divided by the nursing facility's facility-wide CMI for the cost reporting period, and then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period to arrive at the direct care cost component. (3-19-07)

**ii.** If the inflated direct care per diem costs are lower, these costs, minus raw food and Medicaid related ancillary costs, are divided by the nursing facility's facility-wide CMI for the cost reporting period, then multiplied by the nursing facility's most recent quarterly Medicaid

CMI for the rate period. Raw food and Medicaid related ancillary costs are then added back to arrive at the direct care cost component. (3-19-07)

**05. Indirect Care Cost Component.** The indirect care cost component of a facility's rate is the lesser of the facility's inflated indirect care per diem costs, or the indirect per diem cost limit for that type of provider -- free-standing and urban hospital-based nursing facilities, or rural hospital-based nursing facilities. (3-19-07)

~~**06. Efficiency Incentive.** The efficiency incentive is available to those providers, both free-standing and hospital-based, which have inflated per diem indirect care costs less than the indirect per diem cost limit for that type of provider. The efficiency incentive is calculated by multiplying the difference between the per diem indirect cost limit and the facility's inflated per diem indirect care costs by fifty percent (50%) not to exceed nine dollars and fifty cents (\$9.50) per patient day. There is no incentive available to those facilities with per diem costs in excess of the indirect care cost limit, or to any facility based on the direct care cost component. (3-29-10)~~

**076. Costs Exempt From Limitation.** Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined in Section 264 of these rules. (3-19-07)

**087. Property Reimbursement.** The property reimbursement component is calculated in accordance with Section 275 and Subsection 240.19 of these rules. (3-19-07)

**098. Revenue Offset.** Revenues from products or services provided to nonpatients will be offset from the corresponding rate component(s) as described in Section 257 of these rules. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**270. NURSING FACILITY: SPECIAL RATES.**

A special rate consists of a facility's daily reimbursement rate for a patient plus an add-on amount. Section 56-117, Idaho Code, provides authority for the Department to pay facilities an amount in addition to the daily rate when a patient has needs that are beyond the scope of facility services and when the cost of providing for those additional needs is not adequately reflected in the rates calculated pursuant to the principles found in Section 56-102, Idaho Code. This special rate add-on amount for such specialized care is in addition to any payments made in accordance with other provisions of this chapter and is excluded from the computation of payments or rates under other provisions of Section 56-102, Idaho Code, and these rules. (3-19-07)

**01. Determination.** The Department determines to approve a special rate on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request must be based on an identified condition that will continue for a period greater than ~~two~~ **thirty (230) weeks days.** (3-19-07)(    )

**02. Effective Date.** Upon approval, a special rate is effective on the date the application was received, ~~unless the provider requests a retroactive effective date. Special rates~~

*may be retroactive for up to thirty (30) days prior to receipt of the application. (3-19-07)( )*

**03. Reporting.** Costs equivalent to “grossed up” payments for special rate add-on amounts must be removed from the cost components subject to limits, and be reported separately by the provider. The grossed up amount is determined by dividing the Medicaid incremental revenue by Medicaid days and multiplying the result by total patient days. (3-19-07)( )

**04. Limitation.** A special rate cannot exceed the provider's charges to other patients for similar services. (3-19-07)

**05. Prospective Rate Treatment.** Prospective treatment of special rates became effective July 1, 2000. Subsections 270.06 and 270.07 of these rules provide clarification of how special rates are paid under the prospective payment system. (3-19-07)

**06. Determination of Payment for Qualifying Residents.** Special rate add-on amounts are calculated using one (1) of the methods described in Subsections 270.06.a. through 270.06.e. of these rules. (3-19-07)

**a. Special Care Units.** If a facility operates a special care unit, such as a behavioral unit or a Traumatic Brain Injury (TBI) unit, reimbursement is determined as described in Subsections 270.06.a.i. through 270.06.a.v. of these rules. (3-19-07)

**i.** If the facility is below the direct care cost limit with special care unit costs included, no special rate is paid for the unit. (3-19-07)

**ii.** If the facility is over the direct care cost limit with special care unit costs included, a special rate add-on amount will be calculated. The special rate add-on amount for the unit is the lesser of the per diem amount by which direct care costs exceed the limit or a calculated add-on amount. The calculated special rate add-on is derived as follows: each Medicaid resident is assigned a total rate equal to the Medicare rate that would be paid if the resident were Medicare eligible. The resident's acuity adjusted Medicaid rate, based on each resident's individual Medicaid CMI, is subtracted from the Medicare rate. The average difference between the Medicaid and the Medicare rates for all special care unit residents is the calculated special rate add-on amount. The calculated special rate add-on amount is compared to the per diem amount by which the provider exceeds the direct care limit. The lesser of these two amounts is allowed as the special rate add-on amount for the unit. (3-19-07)

**iii.** New Unit Added After July 1, 2000. The Department must approve special rates for new special care units or increases to the number of licensed beds in an existing special care unit. Since a new unit will not have the cost history of an existing unit, the provider's relationship to the cap will not be considered in qualifying for a special rate. New units approved for special rates will have their special add-on amount calculated as the difference between the applicable Medicare price under PPS, and the acuity adjusted Medicaid rate for all unit residents as explained in Section 311.06.a.iii. of these rules. However, the average of these amounts is not limited to the amount the provider is over the direct care cost limit, as the costs of the unit are not in the rate calculation. (3-19-07)

**iv.** One Hundred Percent (100%) Special Care Facility Existing July 1, 2000. If on

July 1, 2000, an entire facility was a special care unit which included Medicaid residents, the facility's direct care cost per diem will not be subject to the direct care cost limit. However, the direct care costs are case mix adjusted based on the ratio of the facility's Medicaid CMI for the rate period to the facility-wide CMI for the cost reporting period. (3-19-07)

v. Unit Routine Customary Charge. If the cost to operate a special care unit is being included in a facility's rate calculation process, the facility must report its usual and customary charge for a semi-private room in the unit on the quarterly reporting form, in addition to the semi-private daily room rate for the general nursing home population. A weighted average routine customary charge is computed to represent the composite of all Medicaid residents in the facility based on the type of rooms they occupy, including the unit. (3-19-07)

b. Equipment and Non-Therapy Supplies. Equipment and non-therapy supplies not addressed in Section 225 of these rules or adequately addressed in the current RUG system, as determined by the Department, are reimbursed at invoice cost in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 755, as an add-on amount. (3-19-07)( )

c. Ventilator Dependent Residents and Residents Receiving Tracheostomy Care. The facility need not exceed the direct care limit to receive a special rate for ventilator care and tracheostomy care. In the case of ventilator dependent and tracheostomy residents, a two (2) step approach is taken to establish an add-on amount. The first step is the calculation of a staffing add-on for the cost, if any, of additional direct care staff required to meet the exceptional needs of these residents that is higher than the amount indicated on the resident's most recent Medicaid RUG score. The add-on is calculated following the provisions in Subsection 270.06.d. of ~~these~~ this rules, adjusted for the appropriate skill level of care staff. The second step is the calculation of an add-on for equipment, ~~supplies, or both up to the invoice cost or rental amount~~ and non-therapy supplies following the provision in Subsection 270.06.b. of this rule. The combined amount of these two (2) components is considered the special add-on amount to the facility's rate for approved residents receiving this care. (3-19-07)( )

d. Residents Not Residing in a Special Care Unit Requiring One-to-One Staffing Ratios. Facilities may at times have residents who require unusual levels of staffing, such as one-to-one staffing ratios to meet the exceptional needs of that resident. If the staffing level is higher than the amount indicated on the resident's most recent Medicaid RUG score, the facility may request a special rate. If the resident qualifies for a special rate for additional direct care staff required to meet the exceptional needs of that resident, an hourly add-on rate is computed for reimbursement of approved one-to-one (1 to 1) hours in excess of the minimum staffing requirements in effect for the period. The hourly add-on rate is equal to the current WAHR CNA wage rate plus a benefits allowance of thirty percent (30%) based on annual cost report data, then weighted to remove the CNA Minimum daily staffing time. (3-19-07)( )

~~e. Varying Levels of One-to-One Care. For varying levels of one-to-one care, such as eight (8) hours or twenty four (24) hours, the total special rate add-on amount is calculated as the number of hours approved for one to one care times the hourly add-on rate as described in Subsection 270.06.d. The WAHR CNA wage rate as described in Section 307 of these rules will be updated prior to the July 1st rate setting each year. Should the WAHR survey be discontinued, the Department may index prior amounts forward, or conduct a comparable survey.~~ (3-19-07)



**07. Treatment of the Special Rate Cost for Future Rate Setting Periods.** Special rates are established on a prospective basis similar to the overall facility rate. When the cost report used to set a prospective rate contains non-unit special rate cost, an adjustment is made to “offset,” or reduce costs by an amount equal to total “grossed up” incremental revenues, or add-on payments received by the provider during the cost reporting period. The amount received is calculated by multiplying the special rate add-on amount paid for each qualifying resident by the number of days that were paid. This calculated Medicaid amount will be grossed up by dividing the Medicaid incremental revenue by Medicaid days and multiplying the result by total patient days. No related adjustment is made to the facility's CMIs. (3-19-07)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**307. PERSONAL CARE SERVICES: PROVIDER REIMBURSEMENT.**

**01. Reimbursement Rate.** Personal assistance providers will be paid a uniform reimbursement rate for service as established by the Department on an annual basis according to Section 39-5606, Idaho Code. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (3-19-07)

**02. Calculated Fee.** The fee calculated for personal care provider reimbursement includes a basic rate for services and mileage. No separate charges for mileage will be paid by the Department for non-medical transportation, unless approved by the RMS under a Home and Community-Based Services (HCBS) waiver, or provider transportation to and from the participant's home. Fees will be calculated as provided in Subsections 307.03 through 307.07 of these rules. (3-19-07)

**03. Weighted Average Hourly Rates.** Annually Medicaid will conduct a poll of all Idaho nursing facilities and ICFs/ID, and establish the weighted average hourly rates (WAHR) for nursing facility industry employees in comparable positions (i.e. RN, QMRP, certified and non-certified nurse's aides) in Idaho to be used in calculating the reimbursement rate to be effective on July 1st of that year. (3-29-10)

**04. Payment for Personal Assistance Agency. ( )**

**a.** The Department will establish Personal Assistance Agency rates for personal assistance services based on the WAHR, ~~plus the WAHR times a fifty five percent (55%) supplemental component to cover travel, administration, training, and all payroll taxes and fringe benefits, as follows:~~ in accordance with Section 39-5606, Idaho Code. For State Fiscal Year 2011, this rate will only be adjusted if the prevailing hourly rate for comparable positions is less than the rate paid during State Fiscal Year 2010.

Personal Assistance Agencies	WAHR x <u>1.55</u> <u>supplemental</u> <u>component</u>	=	\$ amount/hour
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~~(3-29-10)~~( )

**b.** Beginning with State Fiscal Year 2011, every five (5) years the Department will conduct a survey of all Personal Assistance Agencies which requests the number of hours of all Direct Care Staff and the costs involved for all travel, administration, training, and all payroll taxes and fringe benefits. Based on the survey conducted, the Department will calculate a supplemental component using costs reported for travel, administration, training, and all payroll taxes and fringe benefits. The survey data is the cost information collected during the prior State Fiscal Year. ( )

**c.** Based on the survey conducted, provided that at least eighty-five percent (85%) of all Personal Assistance Agencies respond, the Department will calculate a supplemental component using costs reported for travel, administration, training, and all payroll taxes and fringe benefits. The survey data is the cost information collected during the prior State Fiscal Year. If less than eighty-five percent (85%) of all Personal Assistance Agencies respond, the rate will remain at the WAHR rate without the supplemental component. ( )

**05. Payment Levels for Adults in Residential Care or Assisted Living Facilities or Certified Family Homes.** Adult participants living in Residential Care or Assisted Living Facilities (RCALF) or Certified Family Homes will receive personal care services at a rate based on their care level. Each level will convert to a specific number of hours of personal care services. (3-19-07)

**a.** Reimbursement Level I -- One point twenty-five (1.25) hours of personal care services per day or eight point seventy-five (8.75) hours per week. (3-19-07)

**b.** Reimbursement Level II -- One point five (1.5) hours of personal care services per day or ten point five (10.5) hours per week. (3-19-07)

**c.** Reimbursement Level III -- Two point twenty-five (2.25) hours of personal care services per day or fifteen point seventy-five (15.75) hours per week. (3-19-07)

**d.** Reimbursement Level IV - One point seventy-nine (1.79) hours of personal care services per day or twelve point five (12.5) hours per week. This level will be assigned based on a documented diagnosis of mental illness, intellectual disability, or Alzheimer's disease. If an individual is assessed as Level III with a diagnosis of mental illness, intellectual disability, or Alzheimer's disease the provider reimbursement rate will be the higher amount as described in Subsection 307.05.c. of these rules. (3-19-07)

**06. Attending Physician Reimbursement Level.** The attending physician or authorized provider will be reimbursed for services provided using current payment levels and methodologies for other services provided to eligible participants. (3-19-07)

**07. Supervisory RN and QMRP Reimbursement Level.** The supervisory RN and QMRP will be reimbursed at a per visit amount established by the Department for supervisory visits. Participant evaluations and Care Plan Development will be reimbursed at a rate established by the Department, following authorization by the RMS. (3-19-07)

a. The number of supervisory visits by the RN or QMRP to be conducted per calendar quarter will be approved as part of the PCS care plan by the RMS. (3-19-07)

b. Additional evaluations or emergency visits in excess of those contained in the approved care plan will be authorized when needed by the RMS. (3-19-07)

**08. Payment for PCS Family Alternate Care Home.** The Department will establish PCS Family Alternate Care Home rates for personal assistance services based on the WAHR, ~~plus the product of the WAHR times fifty five percent (55%) less the current payroll tax and fringe benefit rate to cover travel, administration, and training, as follows:~~ **in accordance with Section 39-5606, Idaho Code. Beginning with State Fiscal Year 2011, every five (5) years the Department will conduct a survey of all Personal Assistance Agency's which requests the number of hours of all Direct Care Staff and the indirect costs involved such as administration, and training. Based on the survey conducted, the Department will calculate a supplemental component using costs reported for administration, and training. The survey data is the cost information collected during the prior State Fiscal Year.**

PCS Family Alternate Care Home	Children's PCS Assessment Weekly Hours x (WAHR x <del>1.55</del> <b>minus payroll taxes and fringe benefits cost percentage supplemental component</b> )	=	\$ amount/week
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~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**625. ~~ICF/ID EFFICIENCY INCREMENT~~ (RESERVED).**

~~An efficiency increment will be included as a component of the prospective rate, or retrospective settlement if the allowable capped per diem costs are less than the cap. (3-19-07)~~

~~**01. Computing Efficiency Increment.** The efficiency increment will be computed by subtracting the projected or, for facilities subject to retrospective settlement the actual allowable per diem costs incurred by the provider, from the applicable cap. This difference will be divided by five (5). The allowable increment is twenty cents (\$.20) per one dollar (\$1) below the cap up to a maximum increment of three dollars (\$3) per participant day. (7-1-97)~~

~~**02. Determining Reimbursement.** Total reimbursement determined by adding amounts determined to be allowable, will not exceed the provider's usual and customary charges for these services as computed in accordance with this chapter and PRM. In computing participant days for the purpose of determining per diem costs, in those cases where the Medicaid Program or the participant is making payment for holding a bed in the facility, the participant will not be considered to be discharged and thus those days will be counted in the total. (3-19-07)~~

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.13 - CONSUMER-DIRECTED SERVICES

DOCKET NO. 16-0313-1002

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. The effective date for this chapter of rules is July 1, 2011.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, Idaho Code.

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

**The proposed rules for the redesign of children's developmental disabilities benefits included options for children. Changes are being made in the pending rule to stipulate decision-making responsibilities for children, and the definition of participant was amended. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 277 through 291.**

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

**The anticipated fiscal impact for this rulemaking is cost neutral, because the individualized budgets and limitations for participants are being based on historical costs of developmental disabilities agency (DDA) services for children.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Lauren Ertz at (208) 287-1169.

DATED this 12th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, and 56-250 through 257, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

<b>Wednesday, September 15, 2010 6:00 p.m. PDT</b>	<b>Wednesday, September 15, 2010 6:00 p.m. MDT</b>	<b>Wednesday, September 15, 2010 6:00 p.m. MDT</b>
<b>Dept. of Health &amp; Welfare-Reg. 1 1120 Ironwood Drive, Suite 102 Lower Level Large Conf. Rm. Coeur d'Alene, ID</b>	<b>Dept. of Health &amp; Welfare-Reg. 4 1720 Westgate Drive Suite A, Room 131 Boise, ID</b>	<b>Dept. Health &amp; Welfare-Reg. 7 150 Shoup Avenue 2nd Floor, Large Conf. Rm. Idaho Falls, ID</b>

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

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

**These proposed rules for the redesign of children's developmental disabilities benefits include a Family-Directed Services (FDS) option as part of Home and Community Based Services (HCBS) waivers for children and a related State Plan option. This option is very similar to the Consumer-Directed (CD) option available under the Adult DD Waiver program. Changes are being made to this chapter to incorporate the new FDS option and to update the definitions section.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 anticipated fiscal impact for this rulemaking is cost neutral, because the individualized budgets and limitations for participants are being based on historical costs of developmental disabilities agency (DDA) services for children.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday,

**July 14, 2010.** The notice for this negotiated rulemaking published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, p. 27.](#)

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lauren Ertz at (208) 287-1169.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 11th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0313-1002***

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.03.13, “Consumer-Directed Services.” (3-29-10)

**02. Scope.** ~~Self~~Consumer-Directed Community Supports (~~SC~~D~~CS~~) is a flexible program option for participants eligible for the ~~Children’s~~ Home and Community Based Services ~~—Developmental Disabilities~~ (HCBS-~~DD~~) ~~State Plan Option, and Adult and Children’s Developmental Disabilities (DD) waivers.~~ ~~CDCS is not a covered option for participants enrolled in the Children’s Act Early Waiver.~~ The ~~SC~~D~~CS~~ option allows the eligible participant to: choose the type and frequency of supports he wants, negotiate the rate of payment, and hire the person or agency he prefers to provide those supports. (3-30-07)(    )

***(BREAK IN CONTINUITY OF SECTIONS)***

**010. DEFINITIONS.**

**01. Circle of Supports.** People who encourage and care about the participant and provide unpaid supports. (3-30-07)

**02. Community Support Worker.** An individual, agency, or vendor selected and paid by the participant to provide community support worker services. (3-30-07)

**03. Community Support Worker Services.** Community support worker services are those identified supports listed in Section 110 of these rules. (3-30-07)

**04. Consumer-Directed Community Supports (CDCS).** For the purposes of this chapter, consumer-directed supports include Self-Directed Community Supports (SDCS) and Family-Directed Community Supports (FDCS). ( )

**05. Family-Directed Community Supports (FDCS).** A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver and the Children's Home and Community Based Services State Plan Option described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ( )

**046. Financial Management Services (FMS).** Services provided by a fiscal employer agent that include: (3-29-10)

a. Financial guidance and support to the participant by tracking individual expenditures and monitoring overall budgets; (3-30-07)

b. Performing payroll services; and (3-30-07)

c. Handling billing and employment related documentation responsibilities. (3-30-07)

**057. Fiscal Employer Agent (FEA).** An agency that provides financial management services to participants who have chosen the ~~SC~~CDCS option. The fiscal employer agent (FEA) is selected by the participant. The duties of the FEA are defined under Section 3504 of the Internal Revenue Code (26 USC 3504). (~~3-29-10~~)( )

**068. Goods.** Tangible products or merchandise that are authorized on the support and spending plan (3-30-07)

**079. Guiding Principles for the ~~SC~~CDCS Option.** ~~Self~~Consumer-Directed Community Supports is based upon the concept of self-determination and has the following guiding principles: (~~3-30-07~~)( )

a. Freedom for the participant to make choices and plan his own life; (3-30-07)

b. Authority for the participant to control resources allocated to him to acquire needed supports; (3-30-07)

c. Opportunity for the participant to choose his own supports; (3-30-07)

d. Responsibility for the participant to make choices and take responsibility for the result of those choices; and (3-30-07)

e. Shared responsibility between the participant and his community to help the participant become an involved and contributing member of that community. (3-30-07)

**10. Participant.** A person eligible for and enrolled in the Consumer-Directed Services Programs ( )

~~08~~**11. Readiness Review.** A review conducted by the Department to ensure that each fiscal employer agent is prepared to enter into and comply with the requirements of the provider agreement and this chapter of rules. (3-29-10)

**12. Self-Directed Community Supports (SDCS).** A program option for adults eligible for the Adult Developmental Disabilities (DD) Waiver described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ( )

~~09~~**13. Support and Spending Plan.** A support and spending plan is a document that functions as a participant's plan of care when the participant is eligible for and has chosen a selfconsumer-directed service option. This document identifies the goods or services, or both, selected by a participant and the cost of each of the identified goods and services. The participant uses this document to manage his individualized budget. (~~3-29-10~~)( )

**104. Supports.** Services provided for a participant, or a person who provides a support service. A support service may be a paid service provided by a community support worker, or an unpaid service provided by a natural support, such as a family member, a friend, neighbor, or other volunteer. A person who provides a support service for pay is a paid support. A person who provides a volunteer support service is a natural support. (3-30-07)

**115. Support Broker.** An individual who advocates on behalf of the participant and who is hired by the participant to provide support broker Services. (3-30-07)

**126. Support Broker Services.** Services provided by a support broker to assist the participant with planning, negotiating, and budgeting. (3-30-07)

**137. Traditional HCBS Adult DD Waiver Services.** A program option for participants eligible for the ~~Home and Community-Based Services~~ Adult Developmental Disabilities (~~HCBS~~-DD) Waiver consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits;," ~~Subsections 703.01 through 703.12.~~ (~~3-29-10~~)( )

**18. Traditional Children's DD Waiver Services.** A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ( )

**19. Traditional Children's HCBS State Plan Option Services.** A program option for children eligible for the Children's Home and Community-Based Services (HCBS) State Plan Option consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ( )

~~14~~**20. Waiver Services.** A collective term that refers to services provided under a Medicaid Waiver program. (3-29-10)



011. -- ~~0919~~. (RESERVED).

**020. RESPONSIBILITY FOR DECISION-MAKING.**

*Under this chapter of rules, decisions are to be made as follows:* ( )

**01. Children.** *The parent or legal guardian is responsible for decisions made on behalf of a child participant.* ( )

**02. Adults.** *The participant, or legal guardian if one exists, is responsible for decisions made on behalf of an adult participant.* ( )

021. -- 099. (RESERVED).

**100. SELF CONSUMER-DIRECTED COMMUNITY SUPPORTS (SCDCS) OPTION.**

The SCDCS option requires the participant to have a support broker to assist the participant to make informed choices, participate in a person-centered planning process, and become skilled at managing his own supports. The participant must use a fiscal employer agent to provide Financial Management Services (FMS) for payroll and reporting functions. (3-30-07)( )

**101. ELIGIBILITY.**

**01. Determination of Medicaid and Home and Community Based Services - DD Requirements.** In order to choose the SCDCS option, the participant must first be determined Medicaid-eligible and must be determined to meet existing (HCBS-DD) waiver programs or HCBS State Plan Option requirements as outlined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-30-07)( )

**02. Participant Agreement Form.** The participant, and his legal representative, if one exists, must agree in writing using a Department-approved form to the following: (3-30-07)

a. Accept the guiding principles for the SCDCS option, as defined in Section 010 of these rules; (3-30-07)( )

b. Agree to meet the participant responsibilities outlined in Section 120 of these rules; (3-30-07)

c. Take responsibility for and accept potential risks, and any resulting consequences, for their support choices. (3-30-07)

**03. Legal Representative Agreement.** The participant's legal representative, if one exists, must agree in writing to honor the choices of the participant as required by the guiding principles for the SCDCS option. (3-30-07)( )

102. -- 109. (RESERVED).

**110. PAID SELF CONSUMER-DIRECTED COMMUNITY SUPPORTS.**

The participant must purchase Financial Management Services (FMS) and support broker services to participate in the SCDCS option, except for under the family-directed services option

where the qualified parent or legal guardian may act as an unpaid support broker. The participant must purchase goods and community supports through the fiscal employer agent who is providing the FMS. ~~(3-29-10)~~( )

**01. Financial Management Services.** The Department will enter into a provider agreement with a qualified fiscal employer agent, as defined in Section 010 of these rules, to provide financial management services to a participant who chooses the self-consumer-directed option. ~~(3-29-10)~~( )

**02. Support Broker.** Support broker services are provided by a qualified support broker. (3-30-07)

**03. Community Support Worker.** The community support worker provides identified supports to the participant. If the identified support requires specific licensing or certification within the state of Idaho, the identified community support worker must obtain the applicable license or certification. Identified supports include activities that address the participant's preference for: (3-30-07)

**a.** Job support to help the participant secure and maintain employment or attain job advancement; (3-30-07)

**b.** Personal support to help the participant maintain health, safety, and basic quality of life; (3-30-07)

**c.** Relationship support to help the participant establish and maintain positive relationships with immediate family members, friends, spouse, or others in order to build a natural support network and community; (3-30-07)

**d.** Emotional support to help the participant learn and practice behaviors consistent with his goals and wishes while minimizing interfering behaviors; (3-30-07)

**e.** Learning support to help the participant learn new skills or improve existing skills that relate to his identified goals; (3-30-07)

**f.** Transportation support to help the participant accomplish his identified goals; (3-30-07)

**g.** Adaptive equipment identified in the participant's plan that meets a medical or accessibility need and promotes his increased independence; and (3-30-07)

**h.** Skilled nursing support identified in the participant's plan that is within the scope of the Nurse Practice Act and is provided by a licensed professional (RN) nurse or licensed practical nurse (LPN) under the supervision of an RN, licensed to practice in Idaho. (3-30-07)

**111. -- 119. (RESERVED).**

**120. PARTICIPANT RESPONSIBILITIES.**

With the assistance of the support broker and the legal representative, if one exists, the participant

is responsible for the following: (3-30-07)

**01. Guiding Principles.** Accepting and honoring the guiding principles for the SCDCS option found in Section 010 of these rules. (~~3-30-07~~)(    )

**02. Person-Centered Planning.** Participating in the person-centered planning process in order to identify and document support and service needs, wants, and preferences. (3-30-07)

**03. Rates.** Negotiating payment rates for all paid community supports he wants to purchase, ensuring rates negotiated for supports and services do not exceed the prevailing market rate, and including the details in the employment agreements. (3-30-07)

**04. Agreements.** Completing and implementing agreements for the fiscal employer agent, the support broker and community support workers and submitting the agreements to the fiscal employer agent. These agreements must be submitted on Department-approved forms. (3-30-07)

**05. Agreement Detail.** Ensuring that employment agreements specifically identify the type of support being purchased, the rate negotiated for the support, and the frequency and duration of the scheduled support or service. The participant is responsible for ensuring that each employment agreement: clearly identifies the qualifications needed to provide the support or service; includes a statement signed by the hired worker that he possesses the needed skills; and the signature of the participant that verifies the same. Additionally, each employment agreement will include statements that: the participant is the employer even though payment comes from a third party; employees are under the direction and control of the participant; and no employer-related claims will be filed against the Department. (3-30-07)

**06. Plan.** Developing a comprehensive support and spending plan based on the information gathered during the person-centered planning. (3-30-07)

**07. Time Sheets and Invoices.** Reviewing and verifying that supports being billed were provided and indicating that he approves of the bill by signing the timesheet or invoice. (3-29-10)

**08. Quality Assurance and Improvement.** Providing feedback to the best of his ability regarding his satisfaction with the supports he receives and the performance of his workers. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**131. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES.**

The fiscal employer agent performs Financial Management Services for each participant. Prior to providing Financial Management Services the participant and the fiscal employer agent must enter into a written agreement. Financial Management Services include: (3-30-07)

**01. Payroll and Accounting.** Providing payroll and accounting supports to participants that have chosen the Self Consumer-Directed Community Supports option; ~~(3-30-07)~~( )

**02. Financial Reporting.** Performing financial reporting for employees of each participant. (3-30-07)

**03. Information Packet.** Preparing and distributing a packet of information, including Department-approved forms for agreements, for the participant hiring his own staff. (3-30-07)

**04. Time Sheets and Invoices.** Processing and paying time sheets for community support workers and support brokers, as authorized by the participant, according to the participant's Department-authorized support and spending plan. (3-30-07)

**05. Taxes.** Managing and processing payment of required state and federal employment taxes for the participant's community support worker and support broker. (3-30-07)

**06. Payments for Goods and Services.** Processing and paying invoices for goods and services, as authorized by the participant, according to the participant's support and spending plan. (3-30-07)

**07. Spending Information.** Providing each participant with reporting information that will assist the participant with managing the individualized budget. (3-30-07)

**08. Quality Assurance and Improvement.** Participating in Department quality assurance activities. (3-30-07)

**132. -- 134. (RESERVED).**

**135. SUPPORT BROKER REQUIREMENTS AND LIMITATIONS.**

**01. Initial Application to Become a Support Broker.** Individuals interested in becoming a support broker must complete the Department-approved application to document that he: (3-30-07)

**a.** Is eighteen (18) years of age or older; (3-30-07)

**b.** Has skills and knowledge typically gained by completing college courses or community classes or workshops that count toward a degree in the human services field; and (3-30-07)

**c.** Has at least two (2) years verifiable experience with the target population and knowledge of services and resources in the developmental disabilities field. (3-30-07)

**02. Application Exam.** Applicants that meet the minimum requirements outlined in this section will receive training materials and resources to prepare for the application exam. Under Family-Directed Community Supports (FDCS), children's support brokers must attend the initial training. Applicants must earn a score of seventy percent (70%) or higher to pass.

Applicants may take the exam up to three (3) times. After the third time, the applicant will not be allowed to retest for twelve (12) months from the date of the last exam. Applicants who pass the exam, and meet all other requirements outlined in these rules, will be eligible to enter into a provider agreement with the Department. ~~(3-30-07)~~( )

**03. Required Ongoing Training.** All support brokers must document a minimum of twelve (12) hours per year of ongoing, relevant training in the provision of support broker services. Up to six (6) hours of the required twelve (12) hours may be obtained through independent self-study. The remaining hours must consist of classroom training. (3-30-07)

**04. Termination.** The Department may terminate the provider agreement when the support broker: (3-30-07)

**a.** Is no longer able to pass a criminal history background check as outlined in Section 009 of these rules. (3-30-07)

**b.** Puts the health or safety of the participant at risk by failing to perform job duties as outlined in the employment agreement. (3-30-07)

**c.** Does not receive and document the required ongoing training. (3-30-07)

**05. Limitations.** The support broker must not: (3-30-07)

**a.** Provide or be employed by an agency that provides paid community supports under Section 150 of these rules to the same participant; and (3-30-07)

**b.** For Self-Directed Community Supports (SDCS), ~~B~~be the guardian, parent, spouse, payee, or conservator of the participant, or have direct control over the participant's choices. Additionally, the support broker must not be in a position to both influence a participant's decision making and receive undue financial benefit from the participant's decisions. ~~(3-30-07)~~( )

### **136. SUPPORT BROKER DUTIES AND RESPONSIBILITIES.**

**01. Support Broker Initial Documentation.** Prior to beginning employment for the participant, the support broker must complete the packet of information provided by the fiscal employer agent and submit it to the fiscal employer agent. This packet must include documentation of: (3-30-07)

**a.** Support broker application approval by the Department; (3-30-07)

**b.** A completed criminal history check, including clearance in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-30-07)

**c.** A completed employment agreement with the participant that identifies the specific tasks and services that are required of the support broker. The employment agreement must include the negotiated hourly rate for the support broker, and the type, frequency, and duration of services. The negotiated rate must not exceed the maximum hourly rate for support broker services established by the Department. (3-30-07)

**02. Required Support Broker Duties.** Support broker services may include only a few required tasks or may be provided as a comprehensive service package depending on the participant's needs and preferences. At a minimum, the support broker must: (3-30-07)

- a. Participate in the person-centered planning process; (3-30-07)
- b. Develop a written support and spending plan with the participant that includes the supports that the participant needs and wants, related risks identified with the participant's wants and preferences, and a comprehensive risk plan for each potential risk that includes at least three (3) backup plans should a support fail. This plan must be authorized by the Department; (3-30-07)
- c. Assist the participant to monitor and review his budget; (3-30-07)
- d. Submit documentation regarding the participant's satisfaction with identified supports as requested by the Department; (3-30-07)
- e. Participate with Department quality assurance measures, as requested; (3-30-07)
- f. Assist the participant to complete the annual re-determination process as needed, including updating the support and spending plan and submitting it to the Department for authorization; (3-30-07)
- g. Assist the participant, as needed, to meet the participant responsibilities outlined in Section 120 of these rules and assist the participant, as needed, to protect his own health and safety; ~~and~~ ~~(3-30-07)~~( )
- h. Complete the Department-approved criminal history check waiver form when a participant chooses to waive the criminal history check requirement for a community support worker. Completion of this form requires that the support broker provide education and counseling to the participant and his circle of support regarding the risks of waiving a criminal history check and assist with detailing the rationale for waiving the criminal history check and how health and safety will be protected-; ~~and~~ ~~(3-30-07)~~( )
- i. Assist children enrolled in the Family-Directed Community Supports (FDCS) Option as they transition to adult DD services. ( )

**03. Additional Support Broker Duties.** In addition to the required support broker duties, each support broker must be able to provide the following services when requested by the participant: (3-30-07)

- a. Assist the participant to develop and maintain a circle of support; (3-30-07)
- b. Help the participant learn and implement the skills needed to recruit, hire, and monitor community supports; (3-30-07)
- c. Assist the participant to negotiate rates for paid community support workers;

(3-30-07)

- d. Maintain documentation of supports provided by each community support worker and participant's satisfaction with these supports; (3-30-07)
- e. Assist the participant to monitor community supports; (3-30-07)
- f. Assist the participant to resolve employment-related problems; and (3-30-07)
- g. Assist the participant to identify and develop community resources to meet specific needs. (3-30-07)

**04. Termination of Support Broker Services.** If a support broker decides to end services with a participant, he must give the participant at least thirty (30) days' written notice prior to terminating services. The support broker must assist the participant to identify a new support broker and provide the participant and new support broker with a written service transition plan by the date of termination. The transition plan must include an updated support and spending plan that reflects current supports being received, details about the existing community support workers, and unmet needs. (3-30-07)

137. -- 139. (RESERVED).

**140. COMMUNITY SUPPORT WORKER LIMITATIONS.**

A paid community support worker must not be the spouse of the participant, and, for FDCS, must not be the parent or legal guardian of the participant, and must not have direct control over the participant's choices, must avoid any conflict of interest, and must not receive undue financial benefit from the participant's choices. ~~A legal guardian can be a paid community support worker but must not be paid from the individualized budget for the following:~~ (3-30-07)( )

**01. Self-Directed Community Supports (SDCS).** A legal guardian can be a paid community support worker but must not be paid from the individualized budget for the following: ( )

~~**01a. Participant Responsibilities.**~~ The legal guardian must not be paid to perform or to assist the participant in meeting the participant responsibilities outlined in Section 120 of these rules. (3-30-07)( )

~~**02b. Legal Guardian Obligations.**~~ The legal guardian must not be paid to fulfill any obligations he is legally responsible to fulfill as outlined in the guardianship or conservator order from the court. (3-30-07)( )

**02. Family-Directed Community Supports (FDCS).** A parent or legal guardian cannot be a paid community support worker. A paid community support worker: ( )

**a. Must not supplant the role of the parent or legal guardian;** ( )

**b. Cannot be paid to fulfill any obligations that the parent or legal guardian is legally responsible to fulfill for their child.** ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. SUPPORT AND SPENDING PLAN DEVELOPMENT.**

**01. Support and Spending Plan Requirements.** The participant, with the help of his support broker, must develop a comprehensive support and spending plan based on the information gathered during the person-centered planning. The support and spending plan is not valid until authorized by the Department and must include the following: (3-30-07)

**a.** The participant's preferences and interests by identifying all the supports and services, both paid and non-paid, the participant wants and needs to live successfully in his community. (3-30-07)

**b.** Paid or non-paid ~~self~~consumer-directed community supports that focus on the participant's wants, needs, and goals in the following areas: ~~(3-30-07)~~( )

i. Personal health and safety including quality of life preferences; (3-30-07)

ii. Securing and maintaining employment; (3-30-07)

iii. Establishing and maintaining relationships with family, friends and others to build the participant's circle of supports; (3-30-07)

and iv. Learning and practicing ways to recognize and minimize interfering behaviors; (3-30-07)

v. Learning new skills or improving existing ones to accomplish set goals. (3-30-07)

**c.** Support needs such as: (3-30-07)

i. Medical care and medicine; (3-30-07)

ii. Skilled care including therapies or nursing needs; (3-30-07)

iii. Community involvement; (3-30-07)

iv. Preferred living arrangements including possible roommate(s); and (3-30-07)

v. Response to emergencies including access to emergency assistance and care. This plan should reflect the wants, preferences, and needs of the whole person, regardless of payment source, if any. (3-30-07)

**d.** Risks or safety concerns in relation to the identified support needs on the participant's plan. The plan must specify the supports or services needed to address the risks for



each issue listed, with at least three (3) backup plans for each identified risk to implement in case the need arises; (3-30-07)

**e.** Sources of payment for the listed supports and services, including the frequency, duration, and main task of the listed supports and services; and (3-30-07)

**f.** The budgeted amounts planned in relation to the participant's needed supports. Community support worker employment agreements submitted to the fiscal employer agent must identify the negotiated rates agreed upon with each community support worker along with the specific support being purchased, the frequency and duration that the support will be provided, and the payment increment; that is, hourly or daily. The fiscal employer agent will compare and match the employment agreements to the appropriate support categories identified on the initial spending plan prior to processing time sheets or invoices for payment. (3-30-07)

**02. Support and Spending Plan Limitations.** Support and spending plan limitations include: (3-30-07)

**a.** Traditional Medicaid waiver and traditional rehabilitative or habilitative services must not be purchased under the **SCDCS** option. Because a participant cannot receive these traditional services and **selfconsumer**-directed services at the same time, the participant, the support broker, and the Department must all work together to assure that there is no interruption of required services when moving between traditional services and the **SCDCS** option; ~~(3-30-07)~~( )

**b.** Paid community supports must not be provided in a group setting with recipients of traditional Medicaid waiver, rehabilitative or habilitative services. This limitation does not preclude a participant who has selected the **selfconsumer**-directed option from choosing to live with recipients of traditional Medicaid services; ~~(3-30-07)~~( )

**c.** All paid community supports must fit into one (1) or more types of community supports described in Section 110 of these rules. Community supports that are not medically necessary or that do not minimize the participant's need for institutionalization must only be listed as non-paid supports. Additionally, the support and spending plan must not include supports or services that are illegal, that adversely affect the health and safety of the participant, that do harm, or that violate or infringe on the rights of others; (3-30-07)

**d.** Support and spending plans that exceed the approved budget amount will not be authorized; and (3-30-07)

**e.** Time sheets or invoices that are submitted to the fiscal employer agent for payment that exceed the authorized support and spending plan amount will not be paid by the fiscal employer agent. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**180. CIRCLE OF SUPPORTS.**

The circle of support is a means of natural supports for the participant and consists of people who encourage and care about the participant. Work or duties the circle of supports performs on behalf of the participant are not paid. (3-29-10)

**01. Focus of the Circle of Support.** The participant's circle of support should be built and operate with the primary goal of working in the interest of the participant. The group's role is to give and get support for the participant and to develop a plan of action, along with and on behalf of the participant, to help the participant accomplish his personal goals. (3-30-07)

**02. Members of the Circle of Support.** A circle of support may include family members, friends, neighbors, co-workers, and other community members. For the SDCS, Wwhen the participant's legal guardian is selected as a community support worker, the circle of support must include at least one (1) non-family member that is not the support broker. For the purposes of this chapter a family member is anyone related by blood or marriage to the participant or to the legal guardian. (~~3-30-07~~)( )

**03. Selection and Duties of the Circle of Support.** Members of the circle of support are selected by the participant and commit to work within the group to: (3-30-07)

**a.** Help promote and improve the life of the participant in accordance with the participant's choices and preferences; and (3-30-07)

**b.** Meet on a regular basis to assist the participant to accomplish his expressed goals. (3-30-07)

**04. Natural Supports.** A natural support may perform any duty of the support broker as long as the support broker still completes the required responsibilities listed in Subsection 136.02 of these rules. Additionally, any community support worker task may be performed by a qualified natural support person. Supports provided by a natural support person must be identified on the participant's support plan, but time worked does not need to be recorded or reported to the fiscal employer agent. (3-30-07)

**181. -- 189. (RESERVED).**

**190. INDIVIDUALIZED BUDGET.**

The Department sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, medical needs, and other individual factors related to the participant's assessed needs. Using these specific participant factors, the budget-setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. The participant must work within the identified budget and acknowledge that he understands the budget figure is a fixed amount. (3-29-10)

**01. Budget Amount Notification ~~and Request for Reconsideration~~.** The Department notifies each participant of his set budget amount. The notification will include how the participant may request ~~reconsideration of~~ to appeal the set budget amount determined by the Department. (~~3-30-07~~)( )

**02. Annual Re-Evaluation of Individualized Budgets.** Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget. (3-30-07)

**191. -- 199. (RESERVED).**

**200. QUALITY ASSURANCE.**

The Department will implement quality assurance processes to assure: access to ~~self~~consumer-directed services, participant direction of plans and services, participant choice and direction of providers, safe and effective environments, and participant satisfaction with services and outcomes. (~~3-30-07~~)( )

**01. Participant Experience Survey (PES).** Each participant will have the opportunity to provide feedback to the Department about his satisfaction with ~~self~~consumer-directed services utilizing the PES. (~~3-30-07~~)( )

**02. Participant Experience Outcomes.** Participant experience information will be gathered at least annually in an interview by the Department, and will address the following participant outcomes: (3-30-07)

- a. Access to care; (3-30-07)
- b. Choice and control; (3-30-07)
- c. Respect and dignity; (3-30-07)
- d. Community integration; and (3-30-07)
- e. Inclusion. (3-30-07)

**03. Fiscal Employer Agent Quality Assurance Activities.** The fiscal employer agent must participate in quality assurance activities identified by the Department such as readiness reviews, periodic audits, maintaining a list of criminal history check waivers, and timely reporting of accounting and satisfaction data. (3-30-07)

**04. Community Support Workers and Support Brokers Quality Assurance Activities.** Community support workers and support brokers must participate and comply with quality assurance activities identified by the Department including performance evaluations, satisfaction surveys, quarterly review of services provided by a legal guardian, if applicable, and spot audits of time sheets and billing records. (3-30-07)

**05. Participant Choice of Paid Community Support Worker.** Paid community support workers must be selected by the participant, or his chosen representative, and must meet the qualifications identified in Section 150 of this rule. (3-30-07)

**06. Complaint Reporting and Tracking Process.** The Department will maintain a complaint reporting and tracking process to ensure participants, workers, and other supports have the opportunity to readily report instances of abuse, neglect, exploitation, or other complaints regarding the HCBS program. (3-30-07)

**07. Quality Oversight Committee.** A Quality Oversight Committee consisting of participants, family members, community providers, and Department designees will review information and data collected from the quality assurance processes to formulate recommendations for program improvement. (3-30-07)

**08. Quarterly Quality Assurance Reviews.** On a quarterly basis, the Department will perform an enhanced review of services for those participants who have waived the criminal history check requirement for a community support worker or who have their legal guardian providing paid services. These reviews will assess ongoing participant health and safety and compliance with the approved support and spending plan. (3-30-07)

**201. -- 209. (RESERVED).**

**210. CONTINUATION OF THE SELF-CONSUMER-DIRECTED COMMUNITY SUPPORTS (SCDCS) OPTION.**

The following requirements must be met or the Department may require the participant to discontinue the SCDCS option: ~~(3-30-07)~~( )

**01. Required Supports.** The participant is willing to work with a support broker and a fiscal employer agent. (3-30-07)

**a.** The participant can only change FEA services by providing a written request to his current FEA provider at least sixty (60) days in advance, and this change must occur at the end of a fiscal quarter. The request must include the name of the new FEA chosen by the participant and provide the specific date the change will occur. (3-29-10)

**b.** When a participant provides a written request to his current FEA provider to change to a different FEA provider, the current FEA provider must notify the participant of the specific date that the last payroll run will occur at the end of the fiscal quarter. (3-29-10)

**02. Support and Spending Plan.** The participant's support and spending plan is being followed. (3-30-07)

**03. Risk and Safety Back-Up Plans.** Back-up plans to manage risks and safety are being followed. (3-30-07)

**04. Health and Safety Choices.** The participant's choices do not directly endanger his health, welfare and safety or endanger or harm others. (3-30-07)

**211. -- 299. (RESERVED).**

*Fiscal Employer Agent Duties And Responsibilities*

(Sections 300 through 314)

**300. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: DEFINITIONS.**

For purposes of Sections 300 through 314, the following definitions apply: (3-29-10)

**01. Employee.** A community support worker employed by a participant receiving services under the SCDCS option. (~~3-29-10~~)( )

**02. Employer.** A participant receiving services under the SCDCS option. (~~3-29-10~~)( )

**03. Provider.** The term “provider” specifically refers to the fiscal employer agent providing financial management services to individuals participating in selfconsumer-direction. (~~3-29-10~~)( )

**04. SFTP.** Secure File Transfer Protocol. A secure means of transferring data that allows certain Department staff to access information regarding selfconsumer-direction participants. (~~3-29-10~~)( )

**05. Vendor.** Provides goods and services rendered by agencies and independent contractors in accord with a participant’s support and spending plan. (3-29-10)

**06. Medicaid Billing Report.** A report generated every payroll period by the provider; it provides a list and count of unduplicated participants and payroll expenditures by service code, based on the date of service time frame specified by the user. (3-29-10)

**301. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: SELFCONSUMER-DIRECTED COMMUNITY SUPPORTS.**

**01. Federal Tax ID Requirement.** The fiscal employer agent must obtain a separate Federal Employer Identification Number (FEIN) specifically to file tax forms and to make tax payments on behalf of program participants under Section 3504 of the Internal Revenue Code (26 USC 3504). In addition, the provider must: (3-29-10)

**a.** Maintain copies of the participant’s FEIN, IRS FEIN notification letter, and Form SS-4 Request for FEIN in the participant’s file. (3-29-10)

**b.** Retire participant's FEIN when the participant is no longer an employer under selfconsumer-directed community supports (SCDCS). (~~3-29-10~~)( )

**02. Requirement to Report Irregular Activities or Practices.** The provider must report to the Department any facts regarding irregular activities or practices that may conflict with federal or state rules and regulations; (3-29-10)

**03. Procedures Restricting FMS to Adult and Children’s DD Waiver and Children’s HCBS State Plan Option Participants.** The provider must not act as a fiscal employer agent and provide fiscal management services to a ~~an~~ HCBS DD waiver or Children’s

HCBS State Plan Option participant for whom it also provides any other services funded by the Department. ~~(3-29-10)~~( )

**04. Policies and Procedures.** The provider must maintain a current manual containing comprehensive policies and procedures. The provider must submit the manual and any updates to the Department for approval. (3-29-10)

**05. Key Contact Person.** The provider must provide a key contact person and at least (2) two other people for backup who are responsible for answering calls and responding to e-mails from Department staff and ensure these individuals respond to the Department within one (1) business day. (3-29-10)

**06. Face-to-Face Transitional Participant Enrollment.** The provider must conduct face-to-face transitional participant enrollment sessions in group settings or with individual participants in their homes or other designated locations. The provider must work with the regional Department staff to coordinate and conduct enrollment sessions. (3-29-10)

**07. SFTP Site.** The provider must provide an SFTP site for the Department to access. The site must have the capability of allowing participants and their employees to access individual specific information such as time cards and account statements. The site must be user name and password protected. The provider must have the site accessible to the Department upon commencement of the readiness review. (3-29-10)

**08. Required IRS Forms.** The provider must prepare, submit, and revoke the following IRS forms in accordance with IRS requirements and must maintain relevant documentation in each participant's file including: (3-29-10)

- a. IRS Form 2678; (3-29-10)
- b. IRS Approval Letter; (3-29-10)
- c. IRS Form 2678 revocation process; (3-29-10)
- d. Initial IRS Form 2848; and (3-29-10)
- e. Renewal IRS Form 2848. (3-29-10)

**09. Requirement to Obtain Power of Attorney.** The provider must obtain an Idaho State Tax Commission Power of Attorney (Form TC00110) from each participant it represents and must maintain the relevant documentation in each participant's file. (3-29-10)

**10. Requirement to Revoke Power of Attorney.** The provider must revoke the Idaho State Tax Commission Power of Attorney (Form TC00110) when the provider no longer represents the participant and must maintain the relevant documentation in the participant's file. (3-29-10)

**302. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: CUSTOMER SERVICE.**

**01. Customer Service System.** The provider must provide a customer service system to respond to all inquiries from participants, employees, agencies, and vendors. The provider must: (3-29-10)

**a.** Provide staff with customer service training with an emphasis on ~~self~~consumer-direction. (3-29-10)( )

**b.** Ensure staff are trained and have the skills to assist participants with enrollment and to help them understand their account statements. (3-29-10)

**c.** Ensure that fiscal employer agent personnel are available during regular business hours, 8 a.m. to 5 p.m. Mountain Time, Monday through Friday, excluding state holidays. (3-29-10)

**d.** Provide translation and interpreter services (i.e., American Sign Language and services for persons with limited English proficiency). (3-29-10)

**e.** Provide prompt and consistent response to verbal and written communication. Specifically: (3-29-10)

**i.** All voice mail messages must be responded to within one (1) business day; and (3-29-10)

**ii.** All written and electronic correspondence must be responded to within five (5) business days. (3-29-10)

**f.** Maintain a toll-free phone line where callers speak to a live person during business hours and are provided the option to leave voice mail at any time, all day, every day. (3-29-10)

**g.** Maintain a toll-free fax line that is available all day, every day, exclusively for participants and their employees. (3-29-10)

**02. Complaint Resolution and Tracking System.** The provider is responsible for receiving, responding to, and tracking all complaints from any source under this agreement. A complaint is defined as a verbal or written expression of dissatisfaction about fiscal employer agent services. The provider must: (3-29-10)

**a.** Respond to all written and electronic correspondence within five (5) days. (3-29-10)

**b.** Respond to verbal complaints within one (1) business day. (3-29-10)

**c.** Maintain an electronic tracking system and log of complaints and resolutions. The electronic log of complaints and resolutions must be accessible for Department review through the SFTP site. (3-29-10)

**d.** Log and track complaints received from the Department pertaining to fiscal

employer agent services. (3-29-10)

**e.** Compile a summary report and analyze complaints received on a quarterly basis to determine the quality of services to participants and to identify any corrective action necessary. (3-29-10)

**f.** Post the complaint to the SFTP site within twenty-four (24) hours any day a complaint is received Monday through Friday. Saturday and Sunday complaints must be posted to the SFTP site by close of business the following Monday. Failure to comply will result in a fifty dollar (\$50) penalty payable to Medicaid within ninety (90) days of incident. (3-29-10)



# **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

## **16.03.19 - CERTIFIED FAMILY HOMES**

**DOCKET NO. 16-0319-1001**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-3505, Idaho Code.

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

**The pending rule is being adopted as proposed. These rule changes updated guardianship, safety, and sanitation requirements for certified family homes. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 292 through 297.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Karen Vasterling at (208) 239-6260.

DATED this 4th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-3505, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

<b>Wednesday, September 8, 2010 6:00 p.m. PDT</b>	<b>Wednesday, September 8, 2010 6:00 p.m. MDT</b>	<b>Wednesday, September 8, 2010 6:00 p.m. MDT</b>
<b>Dept. of Health &amp; Welfare-Reg. 2 1118 "F" Street 3rd Floor Conf. Room Lewiston, ID</b>	<b>Dept. of Health &amp; Welfare-Reg. 3 3402 Franklin Road Main Conf. Room Caldwell, ID</b>	<b>Dept. of Health &amp; Welfare-Reg. 6 1070 Hilina 2nd Floor, Large Conf. Room Pocatello, ID</b>

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

These rule changes update safety and sanitation requirements for certified family homes. Manufactured homes and modular homes must meet certain requirements at the time of manufacture. Recreational vehicles, commercial coaches, or unregulated or unapproved modifications to approved manufactured or modular homes, and manufactured housing constructed prior to June 15, 1976, are prohibited for use as a certified family home without Department assessment and approval. Non-municipal sewage disposal requirements for proof the septic tank was pumped has been changed from 3 to 5 years. Also, rules governing guardianship of residents by the certified family home provider have been amended.

**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 anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with certified family home providers, residents, and advocacy groups.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN**

**COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karen Vasterling at (208) 239-6260.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0319-1001***

**100. CERTIFICATION REQUIREMENTS.**

Certification is required in order to operate a certified family home in the State of Idaho. The Department will issue a certificate to a home when all certification requirements are met..

(4-11-06)

**01. Certificate Issued in the Name of Provider.** The certificate is issued in the name of the provider applying for certification, and only to the address of the home stated in the application. A new certificate is required if the provider or the location of the certified family home changes.

(4-11-06)

**02. Accessibility to the Home.** The home, physical premises, and all records required under these rules, must be accessible at all times to the Department for the purposes of inspection, with or without prior notification.

(4-11-06)

**03. Number of Residents in the Home.** A home cannot be certified for more than two (2) residents. An exception may be granted by the Department as described in Section 140 of these rules.

(4-11-06)

**04. Certification Limitations.**

(4-11-06)

**a.** A home cannot be certified if it also provides room or board to any person who is not a resident as defined by these rules or a family member. A waiver may be granted by the Department when the individual receiving room or board is the spouse of the resident and does not require certified family home care or any higher level of care;

(4-11-06)

**b.** A home cannot be certified as a certified family home and a child foster home at the same time.

(4-11-06)

**c.** A certified family home provider may not be the guardian of any resident unless the guardian is a parent, child, sibling, or grandparent of the resident. ( )

**05. Certification Study Required.** Following receipt of an acceptable application and

other required documents, the Department will begin a certification study within thirty (30) days. The certification study, along with the application and other required material, will serve as the basis for issuing or denying a certificate. The study will include the following: (4-11-06)

- a. A review of all material submitted; (4-11-06)
- b. A scheduled home inspection; (4-11-06)
- c. An interview with the proposed provider; (4-11-06)
- d. An interview with provider's family, if necessary; (4-11-06)
- e. A review of the number, age, and sex of children or other adults in the home to evaluate the appropriateness of a placement to meet the needs of the resident; (4-11-06)
- f. A medical or psychological examination of the provider or family members, if the Department determines it is necessary; and (4-11-06)
- g. Other information necessary to verify that the home is in compliance with these rules. (4-11-06)

**06. Provider Training Requirements.** As a condition of initial certification, all providers must receive training in the following areas: (4-11-06)

- a. Resident rights; (4-11-06)
- b. Certification in first aid and Cardio-Pulmonary Resuscitation (CPR) which must be kept current; (4-11-06)
- c. Emergency procedures; (4-11-06)
- d. Fire safety, fire extinguishers, and smoke alarms; (4-11-06)
- e. Completion of approved "Assistance with Medications" course; and (4-11-06)
- f. Complaint investigations and inspection procedures. (4-11-06)

**07. Effect of Previous Revocation or Denial of Certificate or License.** The Department is not required to consider the application of any applicant who has had a health care certificate or license denied or revoked until five (5) years have elapsed from the date of denial or revocation according to Section 39-3525, Idaho Code. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. EXCEPTION TO THE TWO RESIDENT LIMIT.**

**01. Application for Exception.** A home may apply to the Department for an exception to the two (2) resident limit to care for three (3) or four (4) residents. (4-11-06)

**02. Criteria for Determination.** The Department will determine if safe and appropriate care can be provided based on resident needs. The Department will consider, at a minimum, the following factors in making its determination: (4-11-06)

**a.** Each current or prospective resident's physical, mental and behavioral status and history; (4-11-06)

**b.** The household composition including the number of adults, children and other family members requiring care from the provider; (4-11-06)

**c.** The training, education, and experience of the provider to meet each resident's needs; (4-11-06)

**d.** Potential barriers that might limit resident safe access to and exit from the rooms in the home; (4-11-06)

**e.** The number and qualifications of care givers in the home; (4-11-06)

**f.** The desires of the prospective and current residents; (4-11-06)

**g.** The individual and collective hours of care needed by the residents; (4-11-06)

**h.** The physical layout of the home and the square footage available to meet the needs of all persons living in the home; and (4-11-06)

**i.** If an exception to the two (2) resident limit would result in two (2) or more residents who require nursing facility level of care living in the home, then the application must also include the information required in Section 130 of these rules. (4-11-06)

**03. Other Employment.** Providers of three (3) or four (4) bed homes must not have other gainful employment unless: (4-11-06)

**a.** The total direct care time for all residents, as reflected by the plan of service and assessments, does not exceed eight (8) hours per day; (4-11-06)

**b.** The provider is immediately available to meet resident needs as they arise; and (4-11-06)

**c.** Each resident is supervised at all times unless the assessment or plan of service indicates the resident may be left unattended for designated periods of time. (4-11-06)

**04. Additional Training.** Providers of three (3) or four (4) bed homes must obtain additional training to meet the needs of the residents as determined necessary by the Department. (4-11-06)

~~05. **Guardianship.** A provider applying to care for three (3) or four (4) residents may not be the guardian of any resident unless either of the following applies: (4-11-06)~~

~~a. The guardianship was established prior to July 1, 2001; or (4-11-06)~~

~~b. The proposed guardian is a parent, child, sibling, or grandparent of the resident. (4-11-06)~~

**065. Exception Nontransferable.** An exception to care for more than two (2) residents will not be transferable to another provider, address, or resident. (4-11-06)

**076. Reassessment of Exception.** An exception to care for more than two (2) residents must be reassessed at least annually and when either of the following occurs: (4-11-06)

a. Each time a new admission is considered; or (4-11-06)

b. When there is a significant change in any of the factors specified in Subsection 140.02 of these rules. (4-11-06)

**087. Annual Home Inspection.** A home with an exception to care for more than two (2) residents must have a home inspection at least annually. (4-11-06)

**098. Shared Sleeping Rooms.** In addition to the requirements in Section 700 of these rules, no more than two (2) residents will be housed in any multi-bed sleeping room. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. ENVIRONMENTAL SANITATION STANDARDS.**

The home is responsible for disease prevention and maintenance of sanitary conditions. (4-11-06)

**01. Water Supply.** The water supply for the home must be adequate, safe, and sanitary. (4-11-06)

a. The home must use a public or municipal water supply or a Department-approved private water supply; (4-11-06)

b. If water is from a private supply, water samples must be submitted to a private accredited laboratory or the District Public Health Laboratory for bacteriological examination at least annually or more frequently if deemed necessary by the Department. Copies of the laboratory reports must be kept on file at the home; and (4-11-06)

c. There must be enough water pressure to meet the sanitary requirements at all times. (4-11-06)

**02. Sewage Disposal.** The sewage disposal system must be in good working order. All sewage and liquid wastes must be discharged, collected, treated, and disposed of in a manner approved by the Department. (4-11-06)

**03. Nonmunicipal Sewage Disposal.** For homes with nonmunicipal sewage disposal, at the time of the initial certification and at least every ~~three~~ **five** (~~3~~**5**) years thereafter the home must provide proof that the septic tank has been pumped or that pumping was not necessary. In addition, at the time of initial certification: ~~(4-11-06)~~(    )

**a.** The home must obtain a statement from the local health district indicating that the sewage disposal system meets local requirements. The statement must be kept on file at the home; or (4-11-06)

**b.** If the local health district does not issue these statements, the home must obtain a statement to that effect from the health district. The statement must be kept on file at the home. (4-11-06)

**04. Garbage and Refuse Disposal.** Garbage and refuse disposal must be provided by the home. (4-11-06)

**a.** Garbage containers outside the home used for storage of garbage and refuse must be constructed of durable, nonabsorbent materials and must not leak or absorb liquids. Containers must be provided with tight-fitting lids. (4-11-06)

**b.** Garbage containers must be maintained in good repair. Sufficient containers must be available to hold all garbage and refuse which accumulates between periods of removal from the premises. Storage areas must be kept clean and sanitary. (4-11-06)

**05. Insect and Rodent Control.** The home must be maintained free from infestations of insects, rodents and other pests. Chemicals (pesticides) used in the control program must be selected, stored, and used safely. (4-11-06)

**a.** The chemical must be selected on the basis of the pest involved and used only in the manner prescribed by the manufacturer; (4-11-06)

**b.** The home must take the necessary precautions to protect residents from obtaining toxic chemicals. (4-11-06)

**06. Yard.** The yard surrounding the home must be safe and maintained. (4-11-06)

**07. Linen-Laundry Facilities and Services.** A washing machine and dryer must be provided for the proper and sanitary washing of linen and other washable goods. (4-11-06)

**08. Housekeeping and Maintenance.** Sufficient housekeeping and maintenance must be provided to maintain the interior and exterior of the home in a clean, safe, and orderly manner. (4-11-06)

**a.** A sleeping room must be thoroughly cleaned including the bed, bedding, and

furnishings before it is occupied by a new resident; and (4-11-06)

b. Deodorizers must not be used to cover odors caused by poor housekeeping or unsanitary conditions. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**701. MANUFACTURED HOMES AND MODULAR BUILDINGS.**

**01. Use of Manufactured Homes and Modular Buildings.** ~~A late model manufactured home~~ Idaho Division of Building Safety (BDS) approved modular buildings or U.S. Department of Housing and Urban Development (HUD) approved buildings may be approved for use as a certified family home when the home meets the following requirements. ~~(4-11-06)~~( )

a. The manufactured or modular home meets the requirements of HUD or BDS requirements in accordance with state and federal regulations as of the date ~~the home was of~~ manufactured ~~is within eighteen (18) years of the date of initial certification.~~ (4-11-06)( )

b. The home meets the adopted standards and requirements of the local jurisdiction in which the home is located. ~~If no local standard has been established, the home must be installed according to the Idaho Manufactured Home Installation standard.~~ (4-11-06)( )

c. Recreational vehicles, commercial coaches, unregulated or unapproved modifications or additions to approved manufactured housing or modular buildings; and manufactured housing constructed prior to June 15, 1976, are prohibited for use as a certified family home without DHW assessment and approval. ( )

**02. Previously Certified.** A manufactured home approved for use as a certified family home before July 1, 2005~~1~~, may continue to be certified when evaluated on a case-by-case basis. ~~(4-11-06)~~( )



# **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

## **16.03.21 - DEVELOPMENTAL DISABILITIES AGENCIES (DDA)**

### **DOCKET NO. 16-0321-1001 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. **The effective date for this chapter of rules is July 1, 2011.**

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-4605, Idaho Code.

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

**The Department is amending the proposed rule to address concerns received during the public comment period. The following terms were added for clarification to the rules: clinical supervision, plan of service, and program implementation plan. These terms were deleted: comprehensive assessment, substantial compliance and supervision. Several changes have been made for clarification around the DDA services, types of certificates, qualifications of those providing services, and national accreditation. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-09, pages 298 through 320.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Randy May (208) 334-5747.

DATED this 4th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-4605, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

<b>Wednesday, September 15, 2010 6:00 p.m. PDT</b>	<b>Wednesday, September 15, 2010 6:00 p.m. MDT</b>	<b>Wednesday, September 15, 2010 6:00 p.m. MDT</b>
<b>Dept. of Health &amp; Welfare-Reg. 1 1120 Ironwood Drive, Suite 102 Lower Level Large Conf. Rm. Coeur d'Alene, ID</b>	<b>Dept. of Health &amp; Welfare-Reg. 4 1720 Westgate Drive Suite A, Room 131 Boise, ID</b>	<b>Dept. Health &amp; Welfare-Reg. 7 150 Shoup Avenue 2nd Floor, Large Conf. Rm. Idaho Falls, ID</b>

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

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

This chapter of rules replaces the existing licensing and certification requirements under IDAPA 16.04.11, "Developmental Disabilities Agencies (DDAs)." This rewritten DDA chapter is needed to provide the necessary certification requirements for providers, and the qualifications necessary to meet those requirements. The existing chapter for Developmental Disabilities Agencies (IDAPA 16.04.11) is being repealed in this Bulletin under Docket 16-0411-1001, and rewritten as a Division of Medicaid, Licensing and Certification chapter of rule, under IDAPA 16.03.21, "Developmental Disabilities Agencies."

**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 anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday, July 14, 2010.

The notice for this negotiated rulemaking published in the July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, p. 35, under Docket No. 16-0411-1001.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Randy May (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 19th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0321-1001***

**IDAPA 16, TITLE 03, CHAPTER 21**

**16.03.21 - DEVELOPMENTAL DISABILITIES AGENCIES (DDA)**

**000. LEGAL AUTHORITY.**

The Idaho Board of Health and Welfare is authorized under the “Idaho Developmental Disabilities Services and Facilities Act,” Section 39-4605, Idaho Code, to adopt rules governing Developmental Disabilities Agencies in Idaho. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA).” ( )

**02. Scope.** These rules govern: ( )

**a.** The certification of Developmental Disabilities Agencies that provide services to persons with developmental disabilities; and ( )

**b.** The provision for services to individuals who meet minimum eligibility criteria under Section 66-402, Idaho Code. ( )

**c.** All agencies that meet the definition of a Developmental Disabilities Agency

(DDA) in Section 010 of these rules must be certified by the Department in accordance with the requirements in this chapter of rules. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter of rules. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**004. INCORPORATION BY REFERENCE.**

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

**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. ( )

**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. ( )

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

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

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

**06. Licensing and Certification Unit.** The Department's Licensing and Certification Unit, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. ( )

**07. Licensing and Certification Unit Website.** <http://www.healthandwelfare.idaho.gov/Medical/LicensingCertification/tabid/124/Default.aspx>. ( )

**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." ( )

**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. ( )

007. -- 008. (RESERVED).

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Verification of Compliance.** The agency must verify that all employees, subcontractors, agents of the agency, and volunteers delivering DDA services have complied with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**02. Requirement to Report Additional Criminal Convictions, Pending Investigations, or Pending Charges.** Once an employee, subcontractor, agent of the agency, or volunteer delivering DDA services has received a criminal history clearance, any additional criminal convictions, pending investigations, or pending charges must be reported to the Department or its designee when the agency learns of the convictions, investigations, or charges. ( )

**010. DEFINITIONS -- A THROUGH Z.**

For the purposes of this chapter of rules, the following terms apply. ( )

**01. ADA.** The "Americans with Disabilities Act Accessibility Guidelines," under 28 CFR Part 36, Appendix A. ( )

**02. Adult.** A person who is eighteen (18) years of age or older. ( )

**03. Agency.** A developmental disabilities agency (DDA) as defined in Section 010 of this rule. ( )

**04. Board.** The Idaho State Board of Health and Welfare. ( )

**05. *Clinical Supervision.*** *Initial direction and procedural guidance by a professional and periodic inspection of the actual work performed at the service delivery site.* ( )

**06. Communicable Disease.** A disease that may be transmitted from one (1) person or an animal to another person either by direct contact or through an intermediate host, vector, inanimate object, or other means that may result in infection, illness, disability, or death. ( )

**07. Deficiency.** A determination of non-compliance with a specific rule or part of rule. ( )

**08. Department.** The Idaho Department of Health and Welfare. ( )

**09. Developmental Disabilities Agency (DDA).** A DDA is an agency that is: ( )

**a.** A type of developmental disabilities facility, defined in Section 39-4604, Idaho Code, that is non-residential and provides services on an outpatient basis; ( )

**b.** Certified by the Department to provide services to people with developmental disabilities, according to this chapter of rules; and ( )

- c. A business entity, open for business to the general public. ( )

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

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

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

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

**11. Human Services Field.** *A particular area of academic study in health care, social services, education, behavioral science or counseling.* ( )

**12. Measurable Objective.** A statement in specific and concrete terms that describes the observable results of the skill to be acquired. ( )

**13. Paraprofessional.** A person delivering support services who meets the qualifications required in Section 400 of these rules. ( )

**14. Participant.** A person who has been identified as having a developmental disability defined in Section 010 of this rule, and who is receiving services through a DDA. ( )

**15. Plan of Service.** *An initial or annual plan that identifies all services and supports.* ( )

**16. Practitioner of the Healing Arts, Licensed.** A licensed physician, physician assistant, or nurse practitioner. ( )

**17. Professional.** A professional delivering services within the scope of his practice and who meets the qualifications required in Section 400 of these rules. ( )

**18. Program Implementation Plan.** *A plan that details how intervention goals from the plan of service will be accomplished.* ( )

**19. Provider.** An agency, or an individual working for an agency, that furnishes DDA services under the provisions of these rules. ( )

**20. Provisional Certificate.** A certificate issued by the Department to a DDA with

deficiencies that do not adversely affect the health or safety of participants. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with an agreed-upon plan. A provisional certificate is issued for a specific period of time, up to, but not to exceed, six (6) months. ( )

**21. Repeat Deficiency.** A violation or deficiency found on a resurvey or revisit to a DDA that was also found during the previous survey or visit. ( )

**22. Staff.** Employees or contractors of an agency who deliver services. ( )

**23. Survey.** A review conducted by the Department to determine compliance with statutes and rules. ( )

**011. -- 074. (RESERVED).**

***SERVICES PROVIDED BY DEVELOPMENTAL DISABILITIES AGENCIES  
(Sections 075 Through 099)***

**075. DDA SERVICES.**

A DDA provides services that include evaluation, diagnostic, training, treatment, and support services that are provided on an outpatient basis to persons with developmental disabilities and may be community-based, home-based, or center-based in accordance with the requirements of this chapter. A DDA may provide the following services as specified on its certificate under Section 120 of these rules. ( )

**01. Support Services.** Support services may include supervision for a participant, as well as assisting and facilitating the participant's integration into the community. ( )

**02. Intervention Services.** Intervention services *include* outcome-based therapeutic services, *professional consultation services, as well as education and training for families caring for participants with developmental disabilities.* ( )

**076. -- 099. (RESERVED).**

***CERTIFICATION REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES  
AGENCIES  
(Sections 100 Through 199)***

**100. DDA CERTIFICATION.**

**01. Certification Required.** Before any agency can operate as a DDA, it must obtain DDA certification from the Department. No agency may provide services until the Department has approved the application for certification. No agency may provide services without a current certificate. ( )

**02. Application for Certification.** All DDAs must apply for certification under

Section 101 of these rules. ( )

**03. Restriction on Certification.** A business entity established by a parent for the sole purpose of providing DDA services to his own child cannot be certified as a DDA. ( )

**04. Effect of Previous Revocation or Denial of a Certificate or License.** The Department is not required to consider the application of any operator, administrator, or owner of an agency who has had his license or certification denied or revoked until five (5) years have lapsed from the date of denial or revocation. ( )

### **101. APPLICATION FOR INITIAL CERTIFICATION.**

**01. Open Application.** An application for certification from new agencies will be accepted on an open and continuous basis. ( )

**02. Content of Application for Certification.** Application for certification must be made on the Department-approved form available by contacting the Department as described in Subsection 005.06 of these rules. The application and supporting documents must be received by the Department at least sixty (60) days prior to the planned opening date. The application must include all of the following: ( )

**a.** Name, address, and telephone number of the agency; ( )

**b.** Types of services to be provided by the agency and the anticipated capacity of each service; ( )

**c.** The geographic service area of the agency as indicated by counties that will be served; ( )

**d.** The anticipated date for the initiation of services; ( )

**e.** An accurate and complete statement of all business names of the agency as filed with the Secretary of State, whether an assumed business name, partnership, corporation, limited liability company or other entity, that identifies each owner with more than five percent (5%) interest in the agency, and the management structure of the agency; ( )

**f.** A statement that the agency is in compliance with these rules and all other applicable local, state and federal requirements, including an assurance that the agency complies with pertinent state and federal requirements governing equal opportunity and nondiscrimination; ( )

**g.** A written code of ethics policy *adopting a code of ethics relevant to professional activities with participants and colleagues, in practice settings. The policy* must articulate basic values, ethical principles and standards for confidentiality, conflict of interest, exploitation, and inappropriate boundaries in an agency's relationship with participants, relatives, or with other agencies. This code of ethics must reflect nationally-recognized standards of practice; ( )

**h.** A copy of the proposed organizational chart or plan for staffing of the agency;



( )

**i.** Staff qualifications including resumes, job descriptions, evidence of compliance with criminal history and background check requirements in Section 009.01 through 009.03 of these rules, and copies of state licenses and certificates for staff when applicable; ( )

**j.** *Written policies and procedures that address professionals entering the field are being provided, or have completed, increased supervision for a period of six (6) months;* ( )

**k.** Written transportation safety policies and procedures required in Section 501 of these rules; ( )

**l.** Staff and participant illness policy, communicable disease policy, and other health-related policies and procedures required in Section 510 of these rules; ( )

**m.** Written policies and procedures that address special medical or health care needs of participants required in Section 510 of these rules; ( )

**n.** Written medication policies and procedures to meet requirements in Section 511 of these rules; ( )

**o.** Written admission, transfer, and transition policies and procedures; ( )

**p.** Written description of the agency's quality assurance program developed to meet requirements in Section 900 of these rules; ( )

**q.** Written participant grievance policies and procedures to meet requirements in Section 905 of these rules; ( )

**r.** Written policies and procedures for reporting incidents to the adult or child protection authority and to the Department to meet requirements in Section 910 of these rules; ( )

**s.** Written policies and procedures that address the development of participants' social skills and the management of participants' inappropriate behavior to meet requirements in Section 915 of these rules; ( )

**t.** Written description of the program records system including a completed sample of a plan of service for participants, program implementation plan, and a monitoring record; ( )

**u.** Written description of the fiscal record system including a sample of program billing; and ( )

**v.** Any other information requested by the Department for determining the agency's compliance with these rules or the agency's ability to provide the services for which certification is requested. ( )

- w.** When center-based services are to be provided, the following are also required for each service location: ( )
- i. A site review must be completed by the Department prior to the initiation of center based services; ( )
  - ii. Address and telephone number for each service location; ( )
  - iii. A checklist that verifies compliance with the ADA requirements under Section 500 of these rules; ( )
  - iv. Evidence of a local fire safety inspection; ( )
  - v. Evidence of compliance with local building and zoning codes, including occupancy permit; ( )
  - vi. Written policies and procedures covering the protection of all persons in the event of fire and other emergencies under Section 500 of these rules; and ( )
  - vii. Written policies and procedures regarding emergency evacuation procedures. ( )

**102. -- 109. (RESERVED).**

**110. DEPARTMENT REVIEW OF APPLICATION FOR CERTIFICATION.**

Upon receipt of the application form and initial application materials, the Department will review the materials to determine if the agency has systems in place, that if properly implemented, would result in regulatory compliance. ( )

**111. DEPARTMENT'S WRITTEN DECISION REGARDING APPLICATION FOR CERTIFICATION.**

The Department will provide to the agency, within thirty (30) days of the date the completed application packet is received, a written decision regarding certification. An application is considered completed when all required documents are received and in compliance with these rules. ( )

**112. -- 114. (RESERVED).**

**115. CHANGES EACH DDA IS REQUIRED TO REPORT.**

**01. Change of Ownership or Physical Location. ( )**

**a.** The DDA must notify the Department at least thirty (30) days prior to any anticipated change in ownership or physical location. In order to continue operation after any such anticipated change, the DDA must receive an updated certificate from the Department that reflects the change. An agency that fails to notify the Department of such changes is operating without a certificate. ( )

**b.** When an agency plans to provide center-based services in a new physical location, on a temporary or permanent basis, the Department will conduct a site review within thirty (30) days after the agency has relocated. Included with the notification required under Subsection 115.01.a. of this rule, the agency must provide: ( )

i. Evidence of review and approval by the local fire and building authorities, including issuance of occupancy permit; and ( )

ii. A checklist that verifies compliance with the ADA requirements under Section 500 of these rules. ( )

**02. Change in Geographic Service Area.** The DDA must notify the Department at least thirty (30) days prior to any anticipated change(s) in the geographic service area including counties served. In order to continue operation after any such anticipated change, the DDA must receive an updated certificate from the Department that reflects the change(s). An agency that fails to notify the Department of such changes is operating without a certificate. ( )

**116. -- 119. (RESERVED).**

**120. INITIAL ISSUANCE OF CERTIFICATE.**

**01. Initial Certification.** When the Department determines that all application requirements have been met, a certificate is issued for a period of up to six (6) months from the initiation of services. During this period, the Department evaluates the agency's ongoing capability to provide services and to comply with these rules. The Department will resurvey the agency prior to the end of the initial certification period. ( )

**02. Return of Certificate.** The certificate is the property of the state and must be returned to the state if it is revoked or suspended. ( )

**03. Certificate Not Transferable.** The certificate is issued only to the agency named thereon, only for the period specified on the certificate, and only to the owners and operators as expressed on the application submitted to the Department, and may not be transferred or assigned to any other person or entity. ( )

**04. Availability of Certificate.** The certificate must be posted in a conspicuous location in the DDA where it may be seen readily by the participants and members of the public. ( )

**05. Service Specific Certification.** The certificate must indicate the type of service the agency is qualified to provide prior to the delivery of service. *Types of certificates* include: ( )

**a.** Support Services; ( )

**b.** Intervention Services; or ( )

**c.** Intervention and Support Services. ( )

**121. -- 124. (RESERVED).**

**125. RENEWAL AND EXPIRATION OF THE CERTIFICATE.**

An agency must request renewal of its certificate no less than ninety (90) days before the expiration date of the certificate, to ensure there is no lapse in certification. The request must contain any changes in optional services provided and outcomes of the internal quality assurance processes required under Section 900 of these rules. ( )

**01. Issuance of Certificate.** The Department issues certificates that are in effect for a period of no longer than three (3) years. ( )

**a.** The Department will survey each agency seeking renewal of its certificate. ( )

**b.** The Department will renew the certificate of an agency it finds to be in substantial compliance with statutes and these rules. ( )

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

**03. Expiration Without Timely Request for Renewal.** Expiration of a certificate without a timely request for renewal automatically rescinds the agency's certificate to deliver services under these rules. ( )

**04. National Accreditation.** *The Department may accept national accreditation in lieu of state certification for developmental disabilities agencies.* ( )

**05. DDA Enrolled Prior to July 1, 2011.** *Agencies certified prior to July 1, 2011, are qualified to provide DDA services under the Intervention and Support Services Certification. Developmental Therapy and Intensive Behavioral Intervention services delivered by an agency are not subject to the requirements listed in Subsection 400.06 of these rules.* ( )

**126. TYPES OF CERTIFICATES ISSUED.**

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

**02. One-Year Certificate.** A one- (1) year certificate is issued by the Department when it determines the agency is in substantial compliance with these rules, but there may be

areas of deficient practice which would impact the agency's ability to provide effective care. An agency is prohibited from receiving consecutive one- (1) year certificates. ( )

**03. Three-Year Certificate.** A three- (3) year certificate is issued by the Department when it determines the agency requesting certification is in substantial compliance with these rules and has no areas of deficient practice that would impact safe and effective care. ( )

**127. -- 299. (RESERVED).**

***RULE ENFORCEMENT PROCESS AND REMEDIES***  
***(Sections 300 Through 399)***

**300. ENFORCEMENT PROCESS.**

The Department may impose a remedy or remedies, when it determines a DDA has not met the requirements in this chapter of rules. ( )

**01. Determination of Remedy.** In determining which remedy or remedies to impose, the Department will consider the DDA's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, and the potential risk to participants. Subject to these considerations, any of the following remedies, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal: ( )

**a.** Require the DDA to submit a plan of correction that must be approved in writing by the Department; ( )

**b.** Issue a provisional certificate with a specific date for correcting deficient practices; ( )

**c.** Ban enrollment of all participants with specified diagnoses; ( )

**d.** Ban any new enrollment of participants; ( )

**e.** Summarily suspend the certificate and transfer participants; or ( )

**f.** Revoke the DDA's certificate. ( )

**02. Immediate Jeopardy.** If the Department finds a DDA's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the DDA's certificate. ( )

**03. Repeat Deficiencies.** If the Department finds a repeat deficiency in a DDA, it may impose any of the remedies listed in Subsection 300.01 of this rule,. The Department may monitor the DDA on an "as needed" basis, until the DDA has demonstrated to the Department's satisfaction that it is in compliance with these rules. If so, then certification will be granted. If not, the certificate will be denied or revoked. ( )

**04. Failure to Comply.** If after three (3) months from the date of survey, the DDA has

not implemented the Plan of Correction *as approved by the Department* and remains out of compliance with the identified rule, the Department may impose one (1) or more of the remedies specified in Subsection 300.01 of this rule. ( )

### **301. REVOCATION OF CERTIFICATE.**

**01. Revocation of the DDA's Certificate.** The Department may revoke a DDA's certificate when persuaded by the preponderance of the evidence that the DDA is not in substantial compliance with the requirements in this chapter of rules. ( )

**02. Causes for Revocation of the Certificate.** The Department may revoke any DDA's certificate for any of the following causes: ( )

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

**b.** When persuaded by existing conditions in the agency that endanger the health or safety of any participant; ( )

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

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

**e.** The agency has failed to comply with any of the conditions of a provisional certificate; ( )

**f.** The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant; ( )

**g.** An accumulation of minor deficiencies that, when considered as a whole, indicate the agency is not in substantial compliance with these rules; ( )

**h.** Repeat deficiencies by the agency of any requirement of these rules or of the Idaho Code; ( )

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

**j.** The agency is not in substantial compliance with the provisions for services required in these rules or with the participants' rights under Section 905 of these rules; ( )

**k.** The agency is delivering services outside the scope of its certificate; or ( )

**1.** The certificate holder refuses to allow the Department or protection and advocacy agencies full access to the agency environment, agency records, or the participants. ( )

**302. -- 309. (RESERVED).**

**310. NOTICE OF ENFORCEMENT REMEDY.**

The Department will notify the following of the imposition of any enforcement remedy on a DDA: ( )

**01. Notice to DDA.** The Department will notify the DDA in writing, transmitted in a manner that will reasonably ensure timely receipt. ( )

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

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

**311. HEARING RIGHTS.**

A DDA may request a hearing following any enforcement action taken by the Department, under Section 003 of these rules. ( )

**312. -- 399. (RESERVED).**

***STAFFING REQUIREMENTS AND PROVIDER QUALIFICATIONS***  
***(Sections 400 Through 499)***

**400. GENERAL STAFFING REQUIREMENTS FOR AGENCIES.**

Each DDA is accountable for all operations, policy, procedures, and service elements of the agency. ( )

**01. Agency Administrator Duties.** The agency administrator is accountable for the overall operations of the agency including ensuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program. ( )

**02. Agency Administrator Qualifications.** An agency administrator must have two (2) years of supervisory or management experience in a developmental disabilities services setting. ( )

**03. Clinical Supervisor Duties.** A clinical supervisor must be employed by the DDA on a continuous and regularly scheduled basis and *be readily available on-site to provide* for: ( )

**a.** The supervision of service elements of the agency, including face to face supervision of agency staff providing direct care services; *and* ( )

**b.** The observation and review of the direct services performed by all paraprofessional and professional staff on at least a monthly basis, or more often as necessary, to ensure staff demonstrate the necessary skills to correctly provide the *DDA* services. ( )

**04. Clinical Supervisor Qualifications.** A person qualified to act as clinical supervisor of a DDA must meet the following requirements: ( )

**a.** Must hold at least a bachelor's degree in a human services field from a nationally accredited university or college; and ( )

**b.** Must provide documentation of one (1) year's supervised experience working with *the population served*; and ( )

**c.** Must demonstrate competencies related to the requirements to provide intervention services as required by the Department; and ( )

**d.** Must complete a additional coursework as required by the Department; *or* ( )

**e.** *Individuals working as Developmental Specialists or as Intensive Behavioral Interventionists prior to July 1, 2011, are qualified to provide clinical supervision until June 30, 2013. The individual must meet the requirements of the Department-approved competency coursework by June 30, 2013, to maintain their certification.* ( )

**f.** The agency administrator and clinical supervisor can be the same individual. ( )

**05. Limitations.** *If an agency administrator or a clinical supervisor also works as a professional delivering direct services, the agency must have policies and procedures demonstrating how the agency will continue to meet agency staffing requirements in Subsections 400.01 through 400.04 of this rule.* ( )

**06. Professionals.** The agency must ensure that staff providing intervention services have the appropriate licensure or certification required to provide services. A person qualified to provide intervention services must also meet the following minimum requirements: ( )

**a.** Must hold at least a bachelor's degree in a human services field from a nationally accredited university or college; ( )

**b.** Must provide documentation of one (1) year's supervised experience working with participants with developmental disabilities; ( )

**c.** Must demonstrate competencies related to the requirements to provide intervention services as required by the Department; and ( )

**d.** Must complete a supervised practicum *and* additional coursework as required by



the Department; *or* ( )

*e. Individuals working as Developmental Specialists or as Intensive Behavioral Interventionists prior to July 1, 2011, are qualified to provide intervention services until June 30, 2013. The individual must meet the requirements of the Department-approved competency coursework by June 30, 2013, to maintain their certification.* ( )

**07. Paraprofessionals.** A person qualified to provide support services must meet the following minimum requirements: ( )

**a.** Meet the qualifications prescribed for the type of services to be rendered; ( )

**b.** Have received instructions in the needs of the participant who will be provided the service; *and* ( )

**c.** Demonstrate the ability to provide services according to a plan of service. ( )

**08. Records of Licenses or Certifications.** The agency must maintain documentation of the staff qualifications, including copies of applicable licenses and certificates. ( )

**09. Parent or Legal Guardian of Participant.** A DDA may not hire the parent or legal guardian of a participant to provide services to the parent's *or legal guardian's* child. ( )

**401. -- 409. (RESERVED).**

**410. GENERAL TRAINING REQUIREMENTS FOR DDA STAFF.**

Each DDA must ensure that all training of staff specific to service delivery to the participant *is* completed *as follows:* ( )

**01. Yearly Training.** The DDA must ensure that staff or volunteers who provide DDA services complete a minimum of twelve (12) hours of formal training each calendar year. Each agency staff providing services to participants must: ( )

**a.** Participate in fire and safety training upon employment and annually thereafter; and ( )

**b.** Be certified in CPR and first aid within ninety (90) days of hire and maintain current certification thereafter; and ( )

**i.** The agency must ensure that CPR and first-aid trained staff are present or accompany participants when services or DDA-sponsored activities are being provided. ( )

**ii.** Each agency staff person must have age appropriate CPR and first aid certification for the participants he serves. ( )

**c.** Be trained to meet any special health or medical requirements of the participants they serve. ( )

**02. Sufficient Training.** Training of all staff must include the following as applicable to their work assignments and responsibilities: ( )

**a.** Optimal independence of all participants is encouraged, supported, and reinforced through appropriate activities, opportunities, and training; ( )

**b.** Correct and appropriate use of assistive technology used by participants; ( )

**c.** Accurate record keeping and data collection procedures; ( )

**d.** Adequate observation, review, and monitoring of staff, volunteer, and participant performance to promote the achievement of participant goals and objectives; ( )

**e.** Participant's rights, advocacy resources, confidentiality, safety, and welfare; and ( )

**f.** The proper implementation of all policies and procedures developed by the agency. ( )

**03. Additional Training for Professionals.** Training of all professional staff must include the following as applicable to their work assignments and responsibilities: ( )

**a.** Correct and consistent implementation of all participants' individual program plans and implementation plans, to achieve individual objectives; ( )

**b.** Consistent use of behavioral and developmental programming principles and the use of positive behavioral intervention techniques. ( )

**411. -- 419. (RESERVED).**

**420. VOLUNTEER WORKERS IN A DDA.**

If volunteers are utilized by a DDA, the agency must establish written policies and procedures governing the screening, training, and utilization of volunteer workers. ( )

**421. -- 499. (RESERVED).**

***FACILITY, SAFETY, AND HEALTH STANDARDS  
(Sections 500 Through 599)***

**500. FACILITY STANDARDS FOR AGENCIES PROVIDING CENTER-BASED SERVICES.**

The requirements in Section 500 of this rule, apply when an agency is providing center-based services. ( )

**01. Accessibility.** Agencies designated under these rules must be responsive to the needs of persons receiving services and accessible to persons with disabilities as defined in Section 504 of the federal Rehabilitation Act, the Americans with Disabilities Act (ADA)

Accessibility Guidelines, and the uniform federal accessibility standard. The DDA must submit a completed checklist to the Department to verify compliance with the ADA requirements. This checklist must be provided to the Department with the application for certification. ( )

**02. Environment.** The facilities of the agency must be designed and equipped to meet the needs of each participant including factors such as sufficient space, equipment, lighting, and noise control. ( )

**03. Fire and Safety Standards.** ( )

**a.** Buildings on the premises must meet all local and state codes concerning fire and life safety that are applicable to a DDA. The owner or operator of a DDA must have the center inspected at least annually by the local fire authority and as required by local city or county ordinances. In the absence of a local fire authority, such inspections must be obtained from the Idaho State Fire Marshall's office. A copy of the inspection must be made available to the Department upon request and must include documentation of any necessary corrective action taken on violations cited; ( )

**b.** There must be written policies and procedures covering the protection of all persons in the event of fire and other emergencies; ( )

**c.** On the premises where natural or man-made hazards are present, suitable fences, guards, or railings must be provided to protect participants; ( )

**d.** The premises must be kept free from the accumulation of weeds, trash, and rubbish; and ( )

**e.** Portable heating devices are prohibited except those units that have heating elements that are limited to not more than two hundred twelve degrees Fahrenheit (212°F). The use of unvented, fuel-fired heating devices of any kind is prohibited. All portable space heaters must be approved by Underwriters Laboratories as well as approved by the local fire or building authority and covered in the local fire or building inspections; and ( )

**f.** All hazardous or toxic substances must be properly labeled and stored under lock and key; and ( )

**g.** Water temperatures in areas accessed by participants must not exceed one hundred twenty degrees Fahrenheit (120°F); and ( )

**h.** There must be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers must be posted near the telephone. ( )

**04. Evacuation Plans.** Evacuation plans must be posted throughout the center. Plans must indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of the building. ( )

**a.** The DDA must conduct quarterly fire drills. At least two (2) times each year these fire drills must include complete evacuation of the building. The DDA must document the amount

of time it took to evacuate the building; and ( )

**b.** A brief summary of each fire drill conducted must be written and maintained on file. The summary must indicate the date and time the drill occurred, participants and staff participating, problems encountered, and corrective action(s) taken. ( )

**05. Food Safety and Storage. ( )**

**a.** When the agency provides food service for participants and meets the definition of a “food establishment,” in Section 39-1602, Idaho Code, the agency must comply with IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments.” Compliance is verified through inspection by the local District Health Department. ( )

**b.** When the agency does not provide food service for participants, it must keep refrigerators and freezers used to store participant lunches and other perishable foods in good repair and equipped with an easily readable thermometer. Refrigerators must be maintained at forty-one degrees Fahrenheit (41°F) or below. Freezers must be maintained at ten degrees Fahrenheit (10°F) or below. ( )

**c.** When medicines requiring refrigeration are stored in a food refrigerator, medicines must be stored in a package and kept inside a covered, leak-proof container that is clearly identified as a container for the storage of medicines. ( )

**06. Housekeeping and Maintenance Services. ( )**

**a.** The interior and exterior of the center must be maintained in a clean, safe, and orderly manner and must be kept in good repair; ( )

**b.** Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; ( )

**c.** The center must be maintained free from infestations of insects, rodents, and other pests; and ( )

**d.** The center must maintain the temperature and humidity within a normal comfort range by heating, air conditioning, or other means. ( )

**501. VEHICLE SAFETY REQUIREMENTS.**

Each DDA that transports participants must: ( )

**01. Preventative Maintenance Program.** Establish a preventive maintenance program for each agency-owned or leased vehicle, including vehicle inspections and other regular maintenance to ensure participant safety. ( )

**02. Transportation Safety Policy.** Develop and implement a written transportation safety policy. ( )

**03. Licenses and Certifications for Drivers and Vehicles.** Obtain and maintain

licenses and certifications for drivers and vehicles required by public transportation laws, regulations, and ordinances that apply to the agency to conduct business and to operate the types of vehicles used to transport participants. Agencies must maintain documentation of appropriate licensure for all employees who operate vehicles. ( )

**04. Applicable Laws, Rules, and Regulations.** Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used. ( )

**05. Liability Insurance.** Continuously maintain liability insurance that covers all passengers and meets the minimum liability insurance requirements under Idaho law. If an agency employee transports participants in the employee's personal vehicle, the agency must ensure that adequate liability insurance coverage is carried to cover those circumstances. ( )

**502. -- 509. (RESERVED).**

**510. HEALTH REQUIREMENTS.**

**01. Required Health Policies and Procedures.** Each DDA must develop policies and procedures that: ( )

**a.** Describe how the agency will ensure that each staff person is free from communicable disease; ( )

**b.** Describe how the agency will protect participants from exposure to individuals exhibiting symptoms of illness. ( )

**c.** Address any special medical or health care needs of particular participants being served by the agency. ( )

**02. Services that Require Licensed Professionals.** Some services are of such a technical nature that they must always be performed by, or under the supervision of, a licensed nurse or other licensed health professional. The agency must ensure all such care is provided within the scope of the care provider's training and expertise. These limitations are outlined in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." ( )

**03. Employees.** Each employee who has direct contact with participants must be free of communicable disease and infected skin lesions while on duty. ( )

**04. Incident Reports.** Each DDA must complete incident reports for all accidents, injuries, or other events that endanger a participant or require the participant to be hospitalized. Each report must document the adult participant's legal guardian, if he has one, or, in the case of a minor, the minor's parent or legal guardian, has been notified or that the participant's care provider has been notified if the participant or the participant's parent or legal guardian has given the agency permission to do so. A documented review by the agency of all incident reports must be completed at least annually with written recommendations. These reports must be retained by the agency for five (5) years. ( )

**05. Reporting Incidents as Mandatory Reporters.** DDA's must notify appropriate

authorities of any health- and safety-related incident they are obligated to report to adult or child protection authorities, or law enforcement as mandatory reporters as required in Section 910 of these rules. ( )

**06. Reporting Incidents to the Department.** If a DDA reports a health- and safety-related incident to protective or legal authorities, they must also notify the Department of this incident within twenty-four (24) hours. ( )

## **511. MEDICATION STANDARDS AND REQUIREMENTS.**

**01. Medication Policy.** Each DDA must develop written medication policies and procedures that outline in detail how the agency will ensure appropriate handling and safeguarding of medications. An agency that chooses to assist participants with medications must also develop specific policies and procedures to ensure this assistance is safe and is delivered by qualified, fully-trained staff. Documentation of training must be maintained in the staff personnel file. ( )

### **02. Handling of Participant's Medication.** ( )

**a.** The medication must be in the original pharmacy-dispensed container, or in an original over-the-counter container, or placed in a unit container by a licensed nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately, unless in a Mediset, blister pack, or similar system. ( )

**b.** Evidence of the written or verbal order for the medication from the physician or other practitioner of the healing arts must be maintained in the participant's record. Medisets filled and labeled by a pharmacist or licensed nurse can serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use can also serve as written evidence of an order from the physician or other practitioner of the healing arts. ( )

**c.** The agency is responsible to safeguard the participant's medications while the participant is at the agency or in the community. ( )

**d.** Medications that are no longer used by the participant must not be retained by the agency or agency staff for longer than thirty (30) calendar days. ( )

**03. Self-Administration of Medication.** When the participant is responsible for administering his own medication without assistance, a written approval stating that the participant is capable of self-administration must be obtained from the participant's primary physician or other practitioner of the healing arts. The participant's record must also include documentation that a physician or other practitioner of the healing arts, or a licensed nurse has evaluated the participant's ability to self-administer medication and has found that the participant: ( )

**a.** Understands the purpose of the medication; ( )

- b.** Knows the appropriate dosage and times to take the medication; ( )
- c.** Understands expected effects, adverse reactions or side effects, and action to take in an emergency; and ( )
- d.** Is able to take the medication without assistance. ( )

**04. Assistance with Medication.** An agency may choose to assist participants with medications; however, only a licensed nurse or other licensed health professional may administer medications. Prior to unlicensed agency staff assisting participants with medication, the following conditions must be in place: ( )

**a.** Each staff person assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program, a course approved by the Idaho State Board of Nursing, or other Department-approved training; ( )

**b.** The participant’s health condition is stable; ( )

**c.** The participant’s health status does not require nursing assessment, as outlined in IDAPA 23.01.01, “Rules for the Idaho Board of Nursing,” before receiving the medication or nursing assessment of the therapeutic or side effects after the medication is taken; ( )

**d.** The medication is in the original pharmacy-dispensed container with proper label and directions, or in an original over-the-counter container, or the medication has been placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container; ( )

**e.** Written and oral instructions from a licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person; ( )

**f.** Written instructions are in place that outline required documentation of assistance and who to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed; ( )

**g.** Procedures for disposal or destruction of medications must be documented and consistent with procedures outlined in the “Assistance with Medications” course. ( )

**05. Administration of Medications.** Only a licensed nurse or another licensed health professional working within the scope of his license may administer medications. Administration of medications must comply with the Administrative Rules of the Board of Nursing, IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” ( )

**512. -- 519. (RESERVED).**

**520. SETTING REQUIREMENTS FOR AGENCIES DELIVERING COMMUNITY-BASED SERVICES.**

The requirements in Section 520 of these rules apply when a DDA is providing community-based services. ( )

**01. Accessibility.** The community-based setting must be accessible, safe, and appropriate for each participant. ( )

**02. Environment.** The community-based setting must be designed and equipped to meet the needs of each participant including factors such as sufficient space, equipment, lighting, and noise control. ( )

**03. Service Group Size.** The community-based services must occur in integrated, inclusive settings and with no more than three (3) participants per *qualified staff* at each session. ( )

**04. Image Enhancement.** The community-based services must enhance each participant's social image and personal competencies. ( )

**05. Promote Inclusion.** The community-based services must promote the participant's inclusion in the natural community. ( )

**06. Natural Environment.** The environment where an activity or behavior naturally occurs that is typical for peers of the participant's age, such as the *home and* community where the *participant* lives *or participates in activities*, and according to the service environment indicated. ( )

**521. -- 599. (RESERVED).**

**PROGRAM REQUIREMENTS**  
*(Sections 600 Through 699)*

**600. PROGRAM DOCUMENTATION REQUIREMENTS.**

Each DDA must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. ( )

**01. Requirements for Participants Seven Through Sixteen.** For participants ages seven (7) through sixteen (16), the DDA must document that the child has been referred to the local school district. ( )

**02. Requirements for Participants Three to Twenty-One.** For participants ages three (3) to twenty-one (21), the following applies: ( )

**a.** For participants who are children enrolled in school, the local school district is the lead agency as required under Individuals with Disabilities Education Act (IDEA), Part B. The DDA must inform the child's home school district if it is serving the child during the hours that



school is typically in session. ( )

i. The DDA participant's record must contain an Individualized Education Plan (IEP), including any recommendations for an extended school year. ( )

ii. The DDA must document that it has provided a current copy of the child's plan of service to the child's school. ( )

iii. The DDA may provide additional services beyond those the school is obligated to provide during regular school hours. ( )

b. For participants of mandatory school attendance age, seven (7) through sixteen (16), who are not enrolled in school, the DDA must document that it has referred the child to the local school district for enrollment in educational and related services under the provisions of the Individuals with Disabilities Education Act (IDEA). ( )

**601. RECORD REQUIREMENTS.**

Each DDA certified under these rules must maintain accurate, current, and complete participant and administrative records. These records must be maintained for at least five (5) years. Each participant record must support the individual's choices, interests, and needs that result in the type and amount of each service provided. Each participant record must clearly document the date, time, duration, and type of service, and include the signature of the individual providing the service, for each service provided. Each signature must be accompanied both by credentials and the date signed. Each agency must have an integrated participant records system to provide past and current information and to safeguard participant confidentiality under these rules. ( )

**01. General Records Requirements.** Each participant record must contain the following information: ( )

a. Authorized plan of service as required for the participant. ( )

b. Program implementation plans that include participant's name, baseline statement, measurable objectives, written instructions to staff, service environments, target date, and corresponding program documentation and monitoring records when intervention services are delivered to the participant. ( )

c. When a participant has had a psychological or psychiatric assessment, the results of the assessment must be maintained in the participant's record. ( )

d. Profile sheet containing the identifying information *reflecting the current status of* the participant, including residence and living arrangement, contact information, emergency contacts, physician, current medications, allergies, special dietary or medical needs, and any other information required to provide safe and effective care; ( )

e. Medical, social, and developmental information and assessments that *reflect the current status of the participant*; and ( )

f. Intervention evaluation. An evaluation must be completed or obtained by the

agency prior to the delivery of the intervention service. The evaluation must include the results, test scores, and narrative reports signed with credentials and dated by the respective evaluators.

( )

**02. Status Review.** Written documentation that identifies the participant's progress toward goals defined on his plan, and includes why the participant continues to need the service.

( )

**03. Case Record Organization.** The case record must be divided into program and discipline areas identified by tabs, including plan of service, medical, social, psychological, speech, and developmental, as applicable.

( )

**602. -- 609. (RESERVED).**

**610. ACCESSIBILITY OF AGENCY RECORDS.**

The DDA and records required under these rules must be accessible to the Department during normal operations of the agency for the purpose of inspection and copying, with or without prior notification, under Section 39-4605(4), Idaho Code.

( )

**611. -- 899. (RESERVED).**

***QUALITY ASSURANCE, PARTICIPANT RIGHTS, REQUIRED POLICIES, ETC.  
(Sections 900 Through 999)***

**900. REQUIREMENTS FOR AN AGENCY'S QUALITY ASSURANCE PROGRAM.**

Each DDA defined under these rules must develop and implement a quality assurance program.

( )

**01. Purpose of the Quality Assurance Program.** The quality assurance program is an ongoing, proactive, internal review of the DDA designed to ensure:

( )

**a.** Services provided to participants produce measurable outcomes, are high quality, and are consistent with individual choices, interests, needs, and current standards of practice;

( )

**b.** Sufficient staff and material resources are available to meet the needs of each person served;

( )

**c.** The environment in which services are delivered is safe and conducive to learning;

( )

**d.** Skill training activities are conducted in the natural setting where a person would commonly learn and utilize the skill, whenever appropriate; and

( )

**e.** The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices.

( )

**02. Quality Assurance Program Components.** Each DDA's written quality assurance program must include: ( )

**a.** Goals and procedures to be implemented to achieve the purpose of the quality assurance program as described in Subsection 900.01 of this rule; ( )

**b.** Person, discipline, or department responsible for each goal; ( )

**c.** A system to ensure the correction of problems identified within a specified period of time; ( )

**d.** A method for assessing participant satisfaction annually including minimum criteria for participant response and alternate methods to gather information if minimum criteria is not met; ( )

**e.** An annual review of the agency's code of ethics, identification of violations, and implementation of an internal plan of correction; ( )

**f.** An annual review of agency's policy and procedure manual to specify date and content of revisions made; and ( )

**g.** *Ongoing* review of participant progress *to ensure* revisions *to* daily activities or specific implementation procedures are *made when progress, regression, or inability to maintain independence is identified.* ( )

**03. Additional Requirements.** The quality assurance program must ensure that DDA services provided to participants: ( )

**a.** Are developed with each participant, parent, or legal guardian, where applicable, and actively promote the participation, personal choice, and preference of the participant; ( )

**b.** Are age appropriate; ( )

**c.** Promote integration; ( )

**d.** Provide opportunities for community participation and inclusion; ( )

**e.** Offer opportunities for participants to exercise their rights; and ( )

**f.** Are observable in practice. ( )

**901. -- 904. (RESERVED).**

**905. PARTICIPANT RIGHTS.**

Each DDA must ensure the rights provided under Sections 66-412 and 66-413, Idaho Code, as well as the additional rights listed in Subsection 905.02 of this rule, for each participant receiving DDA services. ( )

**01. Participant Rights Provided Under Idaho Code.** Section 66-412, Idaho Code, provide the following rights for participants: ( )

- a. Humane care and treatment; ( )
- b. Not be put in isolation; ( )
- c. Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others; ( )
- d. Be free of mental and physical abuse; ( )
- e. Voice grievances and recommend changes in policies or services being offered; ( )
- f. Practice his own religion; ( )
- g. Wear his own clothing and retain and use personal possessions; ( )
- h. Be informed of his medical and habilitative condition, of services available at the agency, and the charges for the services; ( )
- i. Reasonable access to all records concerning himself; ( )
- j. Refuse services; and ( )
- k. Exercise all civil rights, unless limited by prior court order. ( )

**02. Additional Participant Rights.** The agency must also ensure the following rights for each participant: ( )

- a. Privacy and confidentiality; ( )
- b. Receive courteous treatment; ( )
- c. Receive a response from the agency to any request made within a reasonable time frame; ( )
- d. Receive services that enhance the participant's social image and personal competencies and, whenever possible, promote inclusion in the community; ( )
- e. Refuse to perform services for the agency. If the participant is hired to perform services for the agency the wage paid must be consistent with state and federal law; ( )
- f. Review the results of the most recent survey conducted by the Department and the accompanying plan of correction; ( )
- g. All other rights established by law; and ( )

- h. Be protected from harm. ( )

**03. Method of Informing Participants of Their Rights.** Each DDA must ensure and document that each person receiving services is informed of his rights in the following manner: ( )

a. Upon initiation of services, the DDA must provide each participant and his parent or guardian, where applicable, with a packet of information which outlines rights, access to grievance procedures, and the names, addresses, and telephone numbers of protection and advocacy services. This packet must be written in easily understood terms. ( )

b. When providing center-based services, a DDA must prominently post a list of the rights contained in this chapter. ( )

c. The DDA must provide each participant and his parent or guardian, where applicable, with a verbal explanation of their rights in a manner that will best promote individual understanding of these rights. ( )

d. Parents of infants and toddlers under three (3) years of age must be provided with a copy of their parental rights consistent with the requirements of 34 CFR 303.400 through 303.460, and 303.510 through 303.512. ( )

**906. -- 909. (RESERVED).**

**910. OBLIGATION TO REPORT ABUSE, NEGLECT, EXPLOITATION, AND INJURIES.**

Each agency must report all confirmed or suspected incidents of mistreatment, neglect, exploitation, or abuse of participants to the adult or child protection authority in accordance with the “Child Protective Act,” Section 16-1619, Idaho Code, and the “Adult Abuse, Neglect and Exploitation Act,” Section 39-5303, Idaho Code, or law enforcement as mandatory reporters. ( )

**911. -- 914. (RESERVED).**

**915. POLICIES AND PROCEDURES REGARDING DEVELOPMENT OF SOCIAL SKILLS AND MANAGEMENT OF *MALADAPTIVE* BEHAVIOR.**

Each DDA must develop and implement written policies and procedures that address the development of participants’ social skills and management of *maladaptive* behavior. These policies and procedures must include statements that *address*: ( )

**01. Adaptive and Maladaptive Behaviors.** *For intervention services, ensure an evaluation of participants’ adaptive and maladaptive behaviors is completed.* ( )

**02. Social Skills Development.** Focus on developing or increasing participants’ social skills. ( )

**03. Prevention Strategies.** Ensure and document the use of positive approaches to

increase social skills and decrease *maladaptive* behavior while using least restrictive alternatives and consistent, proactive responses to behaviors. ( )

**04. Function of Behavior.** Address the possible underlying causes or function of a behavior and identify what participants may be attempting to communicate by the behavior. ( )

**05. Behavior Replacement.** For intervention services, ensure that programs to assist participants with managing *maladaptive* behavior include teaching of alternative adaptive skills to replace the *maladaptive* behavior. ( )

**06. Protected Rights.** Ensure the safety, welfare, and human and civil rights of participants are adequately protected. ( )

**07. Objectives and Plans.** For intervention services, ensure that objectives and intervention techniques are developed or obtained and implemented to address self-injurious behavior, aggressive behavior, inappropriate sexual behavior, and any other behaviors which significantly interfere with participants' independence or ability to participate in the community. Ensure that reinforcement selection is individualized and appropriate to the task and not contraindicated for medical reasons. ( )

**08. Participant Involvement.** Ensure plans developed by the DDA involve the participants, whenever possible, in developing the plan to increase social skills and to manage *maladaptive* behavior. ( )

**09. Written Informed Consent.** Ensure programs developed by an agency to assist participants with managing *maladaptive* behavior are conducted only with the written informed consent of a participant, parent, or legal guardian, where applicable. When programs used by the agency are developed by another service provider the agency must obtain a copy of the informed consent. ( )

**10. Review and Approval.** Ensure programs developed by an agency to manage *maladaptive* behavior are only implemented after the review and written approval of the professional. If the program contains restrictive or aversive components, a licensed individual working within the scope of their license, must also review and approve, in writing, the plan prior to implementation. When programs implemented by the agency are developed by another service provider, the agency must obtain a copy of these reviews and approvals. ( )

**11. Appropriate Use of Interventions.** Ensure interventions used to manage participants' *maladaptive* behavior are never used: ( )

- a. For disciplinary purposes; ( )
- b. For the convenience of staff; ( )
- c. As a substitute for a needed training program; or ( )
- d. By untrained or unqualified staff. ( )

**916. -- 919. (RESERVED).**

**920. ANNUAL PLAN.**

Each agency is required, as needed, to participate in the development of the state developmental disabilities plan by completing an annual needs assessment survey regarding services for Idahoans with developmental disabilities. ( )

**921. -- 999. (RESERVED).**

**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 - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2010. This pending rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 31-3503C, Idaho Code.

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

**Changes are being made to the proposed rule and the temporary rule is amended to clarify that when a participant is determined Medicaid eligible, the Department will only notify the participant of eligibility.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, pages 28 through 34.](#)**

**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.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Callie King at (208) 334-0663.

DATED this 27th day of September, 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](mailto:dhwrules@dhw.idaho.gov)

***THIS NOTICE PUBLISHED WITH THE 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.

***THE FOLLOWING IS THE TEXT OF 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. ( )

#### **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.” ( )

**02. Scope.** ( )

**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. ( )

**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. ( )

**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. ( )

**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: ( )

i. IDAPA 16.03.01, “Eligibility for Health Care Assistance for Families and Children.” ( )

ii. IDAPA 16.03.05, “Rules Governing Eligibility for the Aged, Blind and Disabled (AABD).” ( )

iii. IDAPA 16.03.06, “Refugee Medical Assistance.” ( )

**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. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed by the provisions of IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” ( )

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference in this chapter of rules. ( )

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

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

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

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

**04. Telephone.** (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is found at [www.healthandwelfare.idaho.gov](http://www.healthandwelfare.idaho.gov). ( )

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

**a.** Address: P.O. Box 83720, Boise, Idaho 83720-0003. ( )

**b.** Telephone: (208) 528-3770. ( )

**c.** Facsimile: (208) 528-3771. ( )

**d.** E-mail address: "SRCU-CntyHospApp@dhw.idaho.gov." ( )

**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." ( )

**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. ( )

**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. ( )

007. -- 009. (RESERVED).

**010. DEFINITIONS.**

For the purposes of this chapter of rules, the following terms apply. ( )

- 01. AABD.** Aid to the Aged, Blind, and Disabled. ( )
- 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.( )
- 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. ( )
- 04. Board.** The Board of the Catastrophic Health Care Cost Program established in Section 31-3517, Idaho Code. ( )
- 05. Clerk.** The clerk of the respective counties or his designee. ( )
- 06. Counties.** The respective counties described in Title 31, Chapter 1, Idaho Code. ( )
- 07. County Commissioners.** The Board of County Commissioners in their respective counties. ( )
- 08. Department.** The Idaho Department of Health and Welfare. ( )
- 09. Director.** The Director of the Idaho Department of Health and Welfare or his designee. ( )
- 10. Eligibility Determination.** The policies, processes, criteria, and standards used by the Department to determine whether or not an individual is eligible for Medicaid. ( )
- 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. ( )
- 12. Hospital.** A facility licensed in accordance with Title 31, Chapter 13, Idaho Code. ( )
- 13. Medicaid.** The federally funded program for medical care (Title XIX, Social Security Act) also known as Idaho's Medical Assistance Program. ( )
- 14. Obligated Person.** The person or persons who are legally responsible for an applicant. ( )

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

**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. ( )

**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. ( )

**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. ( )

**01. IDAPA 16.03.01.** "Eligibility for Health Care Assistance for Families and Children." ( )

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

**03. IDAPA 16.03.06.** "Refugee Medical Assistance." ( )

**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. ( )

**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. ( )

**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. ( )

**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.

( )

**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. ( )

**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. ( )

**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: ( )

**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. ( )

**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. ( )

**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: ( )

**01. Medicaid.** IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." ( )

**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." ( )

**04. Logging an Application and Request.** The Department will log each application and request for Medicaid eligibility determination. ( )

**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. ( )

**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. ( )

**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. ( )

**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, *according to provisions in IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD).* ( )

**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: ( )

**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. ( )

**b.** Assist applicants in completing an application form and request for Medicaid eligibility determination. ( )

**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. ( )

**03. Comply with HIPAA.** Each hospital must comply with the Health Insurance Portability and Accountability Act (HIPAA). ( )



**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: ( )

**a.** Cooperate with the Department, the Board, the hospital, and contractors retained by the Department or the Board. ( )

**b.** Assist applicants in completing an application form and request for Medicaid eligibility determination. ( )

**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. ( )

**03. Comply with HIPAA.** Each respective county must comply with the Health Insurance Portability and Accountability Act (HIPAA). ( )

**161. -- 999. (RESERVED).**

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.04.11 - DEVELOPMENTAL DISABILITIES AGENCIES**

#### **DOCKET NO. 16-0411-1001 - (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. The effective date for this rule is **July 1, 2011**.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 39, Chapter 46, Idaho Code.

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

**This pending rule is being adopted as proposed. The notice of the proposed rule repealing this chapter was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, page 321](#).**

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Randy May at (208) 334-5747.

DATED this 12th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 48, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

<b>Wednesday, September 15, 2010 6:00 p.m. PDT</b>	<b>Wednesday, September 15, 2010 6:00 p.m. MDT</b>	<b>Wednesday, September 15, 2010 6:00 p.m. MDT</b>
<b>Dept. of Health &amp; Welfare-Reg. 1 1120 Ironwood Drive, Suite 102 Lower Level Large Conf. Rm. Coeur d'Alene, ID</b>	<b>Dept. of Health &amp; Welfare-Reg. 4 1720 Westgate Drive Suite A, Room 131 Boise, ID</b>	<b>Dept. Health &amp; Welfare-Reg. 7 150 Shoup Avenue 2nd Floor, Large Conf. Rm. Idaho Falls, ID</b>

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

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

**This chapter is being repealed under this docket and rewritten under IDAPA 16.03.21, "Developmental Disabilities Agencies," Docket 16-0321-1001 in this bulletin. This rewritten chapter will contain the Licensing and Certification requirements for developmental disabilities agencies. With this repeal, the benefits and services have been moved into Department rules under Docket 16-0310-1002, "Medicaid Enhanced Plan Benefits," and Docket 16-0313-1002, "Consumer-Directed Services," in this bulletin.**

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday, July 14, 2010.

The notice for this negotiated rulemaking published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, page 35.](#)

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Randy May at (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 11th day of August, 2010.

**IDAPA 16.04.11 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.05.04 - RULES OF THE IDAHO COUNCIL ON DOMESTIC VIOLENCE**  
**AND VICTIM ASSISTANCE GRANT FUNDING**

**DOCKET NO. 16-0504-1001**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 55-5209, Idaho Code.

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

**The Idaho Council on Domestic Violence is updating the minimum standards document for the Domestic Violence Batterer Treatment Program that is incorporated by reference in this chapter of rules. The minimum standards are being updated to reflect current research on domestic violence treatment, in particular, evidence-based batterer intervention.**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, pages 270 through 274.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Luann Dettman at (208) 332-1540.

DATED this 12th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-5209, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 Idaho Council on Domestic Violence is proposing to update the minimum standards document for the Domestic Violence Batterer Treatment Program that is incorporated by reference in this chapter of rules. The minimum standards are being updated to reflect current research on domestic violence treatment, in particular, evidence-based batterer intervention.**

**The proposed changes will benefit individuals and organizations involved in the effective response to domestic violence as well as those receiving treatment, their families, and their communities. The rule changes will support, with best practices, an effective response to domestic violence that promotes safety, accountability of offenders, and a positive family environment.**

**In addition, the standard “required sections” of this chapter of rules are being included and updated to conform to the current requirements of the Office of the Administrative Rules Coordinator.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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, informal negotiated rulemaking was conducted.

However, no Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the Idaho Administrative Bulletin. Extensive informal negotiated rulemaking in the form of open forums was held during June and July of 2009, in Boise, Idaho Falls, and Coeur d'Alene. For more information, go to: <http://codvbtps.blogspot.com/>.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the Minimum Standards for Domestic Violence Offender Intervention Programs document is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, and because of the cost for republication. The document will be available at <http://www.icdv.idaho.gov> upon approval by the 2011 Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Luann Dettman at (208) 332-1540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 11th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0504-1001**

**000. LEGAL AUTHORITY.**

~~Pursuant to Under Sections 39-5207(2) and 39-5209, Idaho Code, the Council on Domestic Violence and Victim Assistance is authorized to promulgate, adopt, and amend rules to implement the provisions of the Domestic Violence Project Grants Act, as contained in Chapter 52, Title 39, Idaho Code. Furthermore, pursuant to Executive Order No. 85-18 and Section 39-5208(2), Idaho Code, the Council is authorized to administer such other funds as may be made available to accomplish in whole or in part any of the purposes of the laws or orders administered by the Council and to disseminate information on the availability of funds and the application process.~~  
(5-3-03)( )

**001. TITLE AND PURPOSE SCOPE.**

**01. Title.** These title of these rules ~~are to be cited as Idaho Department of Health and Welfare Rules,~~ is IDAPA 16.05.04, "Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding."  
(5-3-03)( )

**02. ~~Purpose Scope.~~** These rules ~~hereby establish the~~ **define the application process, eligibility determination, and other requirements for the grants administered by the** Idaho Council on Domestic Violence and Victim Assistance ~~and subsequent authority to award state and federal grants to programs in the state of Idaho that provide aid to victims of crime.~~ (5-3-03)(    )

**03. Relationship to the Department of Health and Welfare.** The Council on Domestic Violence and Victim Assistance is attached to the Department of Health and Welfare for fiscal and administrative purposes, and any grant awards, disbursement of funds, and other procedural matters must be in compliance with Department requirements. Programmatically the Council is independent of the Department. (5-3-03)

~~002.—003. (RESERVED).~~

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. (    )

**003. ADMINISTRATIVE APPEALS.**

The requirements for appealing a grant award decision are found under Section 033 of these rules. (    )

**004. INCORPORATION BY REFERENCE.**

**01. General.** Unless provided otherwise, any reference in these rules to any document identified in Section 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “document” includes codes, standards, or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

**02. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available: (5-3-03)

**a.** At the Idaho Council on Domestic Violence and Victim Assistance, ~~450 West State Street~~ **304 North 8th Street, Suite 140**, P.O. Box 83720, Boise, Idaho 83720-0036. (5-3-03)(    )

**b.** On the internet at: <http://www.icdv.idaho.gov>. (5-3-03)

**03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-3-03)

**a.** “Domestic Violence Program and Personnel Standards,” published by the Idaho Council on Domestic Violence and Victim Assistance, effective November 20, 1998. (5-3-03)

**b.** “Minimum Standards for ~~Batterer Treatment~~ **Domestic Violence Offender Intervention** Programs,” published by the Idaho Council on Domestic Violence and Victim Assistance, effective ~~April 29, 1999~~ **July 1, 2011**. (5-3-03)(    )

**c.** “Sexual Assault Program and Personnel Standards,” published by the Idaho



Council on Domestic Violence and Victim Assistance, effective April 27, 2001. (5-3-03)

**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. ( )

**02. Mailing Address.** ( )

**a.** The mailing address for the business office of the Idaho Department of Health and Welfare is P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**b.** The mailing address for the business office of the Idaho Council on Domestic Violence and Victim Assistance is P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**03. Street Address.** ( )

**a.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**b.** The business office of the Idaho Council on Domestic Violence and Victim Assistance is located at 304 North 8th Street, Suite 140, Boise, Idaho 83702. ( )

**04. Telephone.** ( )

**a.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**b.** The telephone number for the Idaho Council on Domestic Violence and Victim Assistance is (208) 332-1540, or, Toll Free: 1-800-291-0463. ( )

**05. Internet Website.** ( )

**a.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**b.** The website for the Idaho Council on Domestic Violence and Victim Assistance is found at <http://www.icdv.idaho.gov>. ( )

**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." ( )

**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.  
( )

0057. -- 009. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**033. APPEAL OF GRANT AWARD DECISION.**

No later than fifteen (15) days from the date of written notification from the Council to a program announcing denial of its grant application or suspension or termination of its grant, a program may file a written request for reconsideration of the Council's decision. All requests for reconsideration must be addressed and submitted to the executive director of the Council.  
(3-12-90)

**01. Contents of Request for Reconsideration.** Any request for reconsideration must contain all pertinent facts supporting the program's request for the Council to reconsider its grant award decision.  
(3-12-90)

**02. Disposition of Request for Reconsideration.** Upon notification of a timely request for reconsideration, the chairperson of the Council will appoint a panel composed of three (3) Council members to review the contents of the request and all pertinent data upon which the Council based its original decision.  
(3-12-90)

**03. Disposition of Funds for Service Area Pending Reconsideration.** While a timely and valid request for reconsideration received from a program is pending, fifty percent (50%) of the funds allocated to the service area in which the program is located will be held.  
(3-12-90)

**04. Issuance of Decision.** Following consideration of all data pertinent to the issue, the appointed panel will prepare a written report of its deliberations and issue a dated decision concerning the recommended resolution of the dispute. Copies of the report and the decision will be transmitted to the full Council and to the program submitting the request.  
(3-12-90)

**05. Appeal of the Council's Decision.** If the program is unsatisfied by the decision of the Council, a written appeal setting out the basis for the appeal may be filed. It must be received by the executive director of the Council no later than fifteen (15) days from the date of the Council's written decision.  
(3-12-90)

**06. Hearing on Appeal.** Upon notification of receipt of a timely appeal, the chairperson of the Council will appoint a hearing officer to convene a hearing pursuant to in accordance with the Idaho Administrative Procedure Act, Sections 67-520<sup>91</sup>, et seq. through 67-521<sup>2</sup>, Idaho Code.  
(3-12-90)( )

(BREAK IN CONTINUITY OF SECTIONS)

037. -- 997~~9~~. (RESERVED).

~~998. **INCLUSIVE GENDER**~~

~~For the purposes of these rules, words used in the feminine gender include the masculine and vice versa, where appropriate. (3-12-90)~~

~~999. **SEVERABILITY.**~~

~~Idaho Department of Health and Welfare Rules, IDAPA 16.05.04, "Rules Governing the Domestic Violence and Victim Assistance Grant Projects" are severable. If any rule or part thereof, or the application of such rule to any person or circumstances is declared invalid, that invalidity does not affect the validity of any remaining portion of these rules. (3-12-90)~~

# **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

## **16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS**

**DOCKET NO. 16-0506-1001**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is September 1, 2010. This pending rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 56-1004A, Idaho Code.

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

The Department implemented a selective contract for Non-Emergency Medical Transportation Services under IDAPA 16.03.09, "Medicaid Basic Plan Benefits." These rules for criminal history checks have been amended to reflect that change.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, pages 36 through 44.](#)

**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. N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Steve Bellomy (208) 334-0609.

DATED this 12th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

***THIS NOTICE PUBLISHED WITH THE 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.

***THE FOLLOWING IS THE TEXT OF 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)( )

**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)( )

**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)( )

**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)( )

**(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)( )



(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)(    )

**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)(    )

**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)(    )

**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)(    )

**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)(    )

**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)(    )

**06. ~~Commercial Contracted~~ Non-Emergency ~~Medical~~ 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)(    )

**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)(    )

**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)( )

**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)( )

**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)( )

**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)( )

**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)( )

**13. Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).** ~~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 Persons with Intellectual Disabilities (ICF/ID).” (3-29-10)( )

**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)( )

**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)( )

**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)( )

**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)( )

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)( )~~

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)( )~~

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)( )~~

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)( )~~

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)( )~~

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)( )~~

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)( )~~

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)( )~~

**(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: ~~( )~~

- a.** ~~Disqualifying crimes described in Section 210 of these rules;~~ ~~(3-26-08)~~( )
- b.** A relevant record on the Idaho Child Abuse Central Registry with a Level 1 or Level 2 finding; or ( )
- c.** A relevant record on the Nurse Aide Registry. ( )

**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)~~( )

**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)~~(    )
  - 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.gh. of this rule: (3-29-10)( )

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)( )

~~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)

**jb. Misdemeanor F**orgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-29-10)( )

**kc. Misdemeanor F**orgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-26-08)( )

~~l. Grand theft, as defined in Section 18-2407(1), Idaho Code;~~ (3-26-08)

**md. Misdemeanor f**identity theft, as defined in Section 18-3126, Idaho Code; (4-9-09)( )

**ne. Misdemeanor f**insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-26-08)( )

**of. Misdemeanor P**ublic assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; **or** (4-9-09)( )

~~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. ( )

h. 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; (3-26-08)  
or

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)( )

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)~~( )

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)~~( )

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)~~( )

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**

## **16.06.01 - CHILD AND FAMILY SERVICES**

**DOCKET NO. 16-0601-1001**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-1629, 56-202(b), and 56-1003, Idaho Code; Section 56-803, Idaho Code, re: adoption and guardian assistance; Title IV, Parts B and E of the Social Security Act, as amended by Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) re: guardianship assistance; and Title IV, Part E of the Social Security Act, Section 475(a)(18)(A)&(B) as amended by the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996 (P.L. 103-382, 42 U.S.C. 622).

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

**The Department is amending the proposed rule based on comments received from the Region X federal review of the rule changes. The amendments clarify the language regarding compliance with the requirements of the Multiethnic Placement Act of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 322 through 345.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathy Morris at (208) 334-5706.

DATED this 12th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1629, 56-202(b), and 56-1003, Idaho Code; Section 56-803, Idaho Code, re: adoption and guardian assistance; Title IV, Parts B and E of the Social Security Act, as amended by Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) re: guardianship assistance; and Title IV, Part E of the Social Security Act, Section 475(a)(18)(A)&(B) as amended by the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996 (P.L. 103-382, 42 U.S.C. 622).

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 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:

**In order to bring these rules into compliance with the Department's Title IV-E State Plan, rules are being added that:**

**(1) Address Title IV-E relative guardianship assistance in order to provide for a permanent living situation with a relative for older children, and (2) further detail the requirements of the Multiethnic Placement Act (MEPA).**

**The Fostering Connections to Success and Increasing Adoptions Act of 2008 has changed eligibility for Title IV-E adoption assistance. Within the next eight years (2010-2018), those changes could greatly expand the number of adopted children eligible for adoption assistance subsidies. As a result, it is being clarified in rule who is eligible to receive an adoption subsidy, so those children who are most in need will continue to be able to receive assistance.**

In order to bring the rules into alignment with current practice, (1) the rules regarding contact requirements for foster children in out-of-state care are being clarified, (2) risk-oriented language in rule is being replaced with safety-oriented language, and (3) the requirement for parent signature on the alternate care plan is being removed from rules.

Since the category of “professional foster care” has been eliminated from rule, the Department is replacing this term with an actual dollar amount that establishes the maximum adoption assistance for children in foster care who are eligible for personal care services. This will simplify the foster care rate structure and reduce confusion for foster parents.

**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. These rule changes are being made to bring the rules into alignment with the Department’s Title IV-E State Plan and applicable federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 4th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-1001***

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01. Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA).** Federal law whose purpose is to improve the safety of children, to promote adoption and other permanent

homes for children who need them, and to support families. ( )

**012.** **Adoption Assistance.** Funds provided to adoptive parent(s) of a child who has special needs or who could not be adopted without financial or medical assistance. (5-8-09)

**023.** **Adoption Services.** Protective services through which a child is provided with a permanent home, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. (5-8-09)

**034.** **Alternate Care.** Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment, and institutional resources, under the protections established in Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act, 25 U.S.C. Sections 1901-1963. (5-8-09)

**045.** **Alternate Care Plan.** A federally-required component of the Family Plan for a child in alternate care. The alternate care plan contains elements related to reasonable efforts, the family's plan, the child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical, and other information important to the day-to-day care of the child. (5-8-09)

**056.** **Area of Concern.** Circumstances that brought a child and family to the attention of the Department. These circumstances typically involve safety issues that put the child at risk of harm. (3-30-07)

**067.** **Assessment.** The first step in the planning process, the outcome of which is the systematic documentation of the family's areas of concern, their strengths, and desired outcomes. (3-30-07)

**078.** **Board.** The Idaho State Board of Health and Welfare. (3-18-99)

**089.** **Case Management.** A change-oriented service to families that ~~ass~~ensures and coordinates the provision of family ~~risk~~ ongoing assessment, family service planning, treatment, planning for permanency, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (5-8-09)( )

**0910.** **Certified Adoption Professional (formerly "qualified individual").** An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (3-20-04)

**11.** **Child and Family Services.** Those programs and services provided to families and children, administered by the Department in accordance with these rules. ( )

**102.** **Child Protection.** All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare through non-accidental

physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter must be served without regard to income. (3-30-07)

**143. Child Protective Services.** Services provided in response to potential, alleged, or actual abuse, neglect, or abandonment of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the “Child Protective Act.” (5-8-09)

**124. Compact Administrator.** The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-2101 et seq., Idaho Code; “Interstate Compact on the Placement of Children,” Section 16-1901 et seq., Idaho Code; or the “Interstate Compact on Adoption and Medical Assistance,” Section 39-7501 et seq., Idaho Code. (5-8-09)

**135. Daycare for Children.** 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 to the person or persons providing the care, in a place other than the child’s or children’s own home or homes. (3-18-99)

**146. Department.** The Idaho Department of Health and Welfare. (3-18-99)

**157. Deprivation.** One of the factors used in determining Aid to Families with Dependent Children -- Foster Care (AFDC-FC) eligibility for children in foster care. Deprivation is a lack of, or interruption in, the maintenance, physical care, and parental guidance a child ordinarily receives from one (1) or both parents. A child is deprived by the continued absence of a parent, incapacity of a parent, death of a parent, unemployment or underemployment of the principal wage earner parent. (3-30-07)

**168. Desired Result.** Behaviorally-specific description of how the family circumstances will look when the ~~risk~~ **safety** factors that brought a child and family to the Department's attention, either no longer exist or are significantly reduced. ~~(3-30-07)~~( )

**179. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)

**1820. Extended Family Member of an Indian Child.** As defined by the law, or custom of an Indian child’s tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01. Family.** Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

~~**02. Child and Family Services.** Those programs and services directed to families and~~

~~children, administered by the Department and provided in accordance with these rules. (5-8-09)~~

**032. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)

**043. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)

**054. Family (Case) Plan.** Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)

**065. Family Services Worker.** Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)

**06. Federally-Funded Guardianship Assistance for Relatives.** Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. ( )

**07. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)

**08. Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)

~~**09. Guardianship Assistance.** State benefits provided to legal guardian(s) for the support of a child for whom efforts to place for adoption have been unsuccessful and who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (3-30-07)~~

~~**10. Immediate Safety Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety threats, risks, or immediate service needs exist that require further Child and Family Services response. (5-8-09)~~

~~**H09. Independent Living.** Services provided to eligible foster or former foster youth, ages fifteen (15) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)~~

**120. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

**131. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

- a.** A member of an Indian tribe, or (3-18-99)
- b.** Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)

**142. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

**153. Indian Child's Tribe.** (3-18-99)

**a.** The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

**b.** In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

**164. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

**175. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

**186. Interethnic Adoption Provisions of 1996 (IEPA).** IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (~~5-3-03~~)(    )

**197. Interstate Compact on the Placement of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

**2018. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

**012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01. Legal Guardianship.** A judicially-created relationship, in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a

~~relative or non-relative caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term “legal guardian” means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights. (5-3-03)( )~~

**02. Licensed.** Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-30-07)

**03. Licensing.** See IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing,” Section 100. (3-30-07)

**04. Medicaid.** See “Title XIX.” (3-30-01)

**05. Multiethnic Placement Act of 1994 (MEPA).** MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color, or national origin. (3-18-99)

**06. Parent.** A person who, by birth or through adoption, is considered legally responsible for a child. The term “legal guardian” is not included in the definition of parent. (5-8-09)

**07. Permanency Planning.** A primary function of family services initiated in all cases to identify programs, services, and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

**08. Personal Care Services (PCS).** Services to eligible Medicaid recipients that involve personal and medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

**09. P.L. 96-272.** Public Law 96-272, the federal “Adoption Assistance and Child Welfare Act of 1980.” (3-30-01)

**10. P.L. 105-89.** Public Law 105-89, the federal “Adoptions and Safe Families Act of 1997,” amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

**11. Planning.** An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

**12. Qualified Expert Witness--ICWA.** A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

**a.** A member of the Indian child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child-rearing practices; (3-18-99)



**b.** An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; (3-18-99)

**c.** A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community; or (3-18-99)

**d.** An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)

**13. Relative.** Person related to a child by blood, marriage, or adoption. (3-30-01)

**14. Relative Guardian.** A relative who is appointed a child's legal guardian in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including a guardianship established by a tribal court. ( )

**145. Reservation.** Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)

**156. Respite Care.** Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a licensed or agency-approved caregiver different from his usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (5-8-09)

**167. Responsible Party.** ~~An individual such as a~~ Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. (5-8-09)( )

### **013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01. SSI (Supplemental Security Income).** Income maintenance grants for eligible persons who are aged, blind, or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

**02. Safety Assessment.** A process and standardized tool for contact between a family services worker and a family to objectively determine if safety threats, or immediate service needs exist that require further Child and Family Services response. ( )

**023. Safety Plan.** Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe.(3-30-01)

04. State-Funded Guardianship Assistance. Benefits described in Subsection 702.04 and Section 704 of these rules provided to a legal guardian for the support of a child who meets the eligibility criteria. ( )

~~035~~. **TAFI.** Temporary Assistance to Families in Idaho. (3-18-99)

~~046~~. **Title IV-E.** Title under the Social Security Act which provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

~~057~~. **Title IV-E Foster Care.** Child care provided in lieu of parental care in a foster home, children's agency, or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (5-8-09)

~~068~~. **Title XIX (Medicaid).** Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs." (3-18-99)

~~079~~. **Title XXI.** (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

~~0810~~. **Tribal Court.** A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

~~0911~~. **Unmarried Parents' Services.** Services aimed at achieving or maintaining self-reliance or self-support for unmarried parents. These services include counseling for any unmarried parents who need such service in relation to their plans for their children and arranging for and paying for prenatal and confinement care for the well-being of the parent and infant. Services for unmarried parents are provided in accordance with Section 56-204A, Idaho Code. (5-8-09)

~~102~~. **Voluntary Services Agreement.** A written and executed agreement between the Department and parents or legal guardians regarding the goal, areas of concern, desired results, and task responsibility, including payment. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. CORE CHILD AND FAMILY SERVICES.**

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

**01. Crisis Services.** Crisis Services are an immediate response to ~~ensure~~ safety when a child is believed to be in imminent danger as a result of child abuse, neglect, or

abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess ~~risk~~ safety and place in alternate care, if necessary, to ~~ensure~~ ensure safety for the child. (5-8-09)( )

**02. Screening Services.** Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

**03. Assessment and Safety/Service Planning Services.** Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed together by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (5-8-09)( )

**04. Preventative Services.** Community-based services which support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

**05. Court-Ordered Services.** These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

**06. Alternate Care (Placement) Services.** Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed, approved or specified by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (5-8-09)

**07. Community Support Services.** Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

**08. Interstate Compact on Out-of-State Placements.** Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the "Interstate Compact on the Placement of Children." Placements must be in

compliance with all state and federal laws. (5-8-09)

**09. Independent Living.** Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

**a.** Eligibility Requirements for Current Foster Youth. To be eligible for independent living services, a current foster youth must: (5-8-09)

i. Be fifteen (15) to nineteen (19) years of age; (5-8-09)

ii. Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is between eighteen (18) and nineteen (19) years of age; and (5-8-09)

iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)

**b.** Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (5-8-09)

i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)

ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has reached eighteen (18) years of age; and (5-8-09)

iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching fifteen (15) years of age; or (5-8-09)

iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)

**c.** Eligibility Limit. Once established, a youth's eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)

**10. Adoption Services.** Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

**11. Administrative Services.** Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)

- a. Child care licensing; (3-30-01)
- b. Daycare licensing; (3-30-01)
- c. Community development; and (5-8-09)
- d. Contract development and monitoring. (5-8-09)

**031. -- 049. (RESERVED).**

**050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.**

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to ~~ass~~ensure timely permanency for children and to protect the rights of children, their families and their tribes. ~~(3-30-01)~~( )

**01. Reasonable Efforts.** Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with ~~their~~ **his** family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. ~~(5-8-09)~~( )

- a. Efforts to prevent or eliminate the need for a child to be removed from his home; (5-8-09)
- b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)
- c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

**02. Active Efforts.** For an Indian child, a description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. (5-3-03)

**03. ICWA Preferences.** If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences. (3-18-99)

**04. Least Restrictive Setting.** Efforts will be made to ~~ass~~ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child. ~~(5-8-09)~~( )

**05. Legal Requirements for Indian Children.** In the case of an Indian child, notice of the pending proceeding must be sent by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe, including notice of their right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent to a voluntary foster placement. (3-30-07)

**06. Visitation for Child's Parent(s) or Legal Guardian(s).** Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. (3-30-07)

**07. Notification of Change in Placement.** Written notification to the child's parent(s) or legal guardian(s) within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA. (5-3-03)

**08. Notification of Change in Visitation.** Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)

**09. Notification of Right to Participate and Appeal.** Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (3-30-07)

**10. ICWA Placement Preferences.** Compliance with the foster care placement preferences of the Indian Child Welfare Act. (3-18-99)

**11. Compliance with Requirements of the Multiethnic Placement Act ~~and~~ of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996. (~~3-30-01~~)( )**

**a.** *The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin. ( )*

**b.** *The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program, from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin; ( )*

**c.** *To remain eligible for federal assistance for their child welfare programs, the Department must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes; ( )*

d. A child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests; ( )

e. Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and ( )

f. Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978. ( )

**12. Family Decision-Making and Plan Development.** (3-30-01)

**a.** A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)

**b.** Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)

**c.** Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

**13. Compelling Reasons.** Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)

**14. ASFA Placement Preferences.** The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (5-8-09)

**a.** Return home if safe to do so; (3-30-01)

**b.** Adoption or legal guardianship by a relative or kin; (5-8-09)

**c.** Adoption or legal guardianship by non-relative; (3-30-01)

**d.** Another planned permanent living arrangement such as long-term foster care. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**405. ALTERNATE CARE CASE MANAGEMENT.**

Case management must continue while the child is in alternate care and must ensure the following: (3-30-07)

**01. Preparation for Placement.** Preparing a child for placement in alternate care is the joint responsibility of the child's family, the child (when appropriate), the family services worker, and the alternate care provider. (3-30-07)

**02. Information for Alternate Care Provider.** The Department and the family must inform the alternate care provider of their roles and responsibilities in meeting the needs of the child including: (3-30-07)

**a.** Any medical, health and dental needs of the child including the names and address of the child's health and educational providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; (3-18-99)

**b.** The name of the child's doctor; (3-18-99)

**c.** The child's current functioning and behaviors; (3-18-99)

**d.** The child's history and past experiences and reasons for placement into alternate care; (3-30-01)

**e.** The child's cultural and racial identity; (3-18-99)

**f.** Any educational, developmental, or special needs of the child; (3-18-99)

**g.** The child's interest and talents; (3-18-99)

**h.** The child's attachment to current caretakers; (3-18-99)

**i.** The individualized and unique needs of the child; (3-18-99)

**j.** Procedures to follow in case of emergency; and (3-18-99)

**k.** Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

**03. Consent for Medical Care.** Parent(s) or legal guardian(s) must sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the family case record. (3-30-07)

**04. Financial Arrangements.** The family services worker must assure that the



alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (3-30-07)

**05. Contact with Child.** The family, the family services worker, and the alternate care provider must establish a schedule for frequent and regular visits with the child by the family and by the family services worker or designee. (5-8-09)

**a.** Face-to-face contact with a child by the responsible party must occur at least monthly or more frequently depending on the needs of the child or the provider, or both, and the stability of the placement. Face-to-face contact may be made in settings other than where the child resides as long as contact between the responsible party and the child occurs where the child resides a minimum of once every sixty (60) days. (5-8-09)

**b.** The Department will have strategies in place to detect abuse, neglect, or abandonment of children in alternate care. (5-8-09)

**c.** Face-to-face contact between the responsible party and a child placed in an in-state group or residential care facility, located a significant distance from the responsible party's office is required a minimum of once every ninety (90) days. Communication by phone between the responsible party and the child must occur at least monthly. (5-8-09)

**d.** Frequent and regular contact between the child and parents and other family members will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures, and the use of video and other technology as may be relevant and available. (3-30-07)

**e.** Children who are in out-of-state placements through the Interstate Compact on the Placement of Children (ICPC) must be contacted face-to-face no less frequently than every six (6) months, by either the responsible party in Idaho, by a representative of the state in which the child is placed, or by a private agency contracted by either. Idaho will request the state in which the child is placed to have face-to-face contact with the child on a monthly basis. If the policy of the state in which the child is placed allows only for face-to-face contact every six (6) months, the responsible party in Idaho will contact the child and the child's caregiver each month by phone to confirm the child's safety and well-being. (5-8-09)( )

**06. Discharge Planning.** Planning for discharge from alternate care will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (5-8-09)

**07. Transition Planning.** Planning for discharge from alternate care into a permanent placement will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-30-07)

**08. Financial and Support Services.** As part of the discharge planning, Departmental resources will be coordinated to expedite access to Department financial and medical assistance and community support services. (3-30-07)

406. -- 421. (RESERVED).

**422. ALTERNATE CARE PLANNING.**

The elements of Aalternate care planning is are mandated by the provisions of Sections 471(a)(15) and 475, P.L. 96-272 Title IV-E, Sections 471(a)(16), 475(1), and 475(5)(A) and (D) of the Social Security Act. (3-18-99)( )

**01. Alternate Care Plan Required.** Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. (5-8-09)

**a.** The purpose of the alternate care plan is to facilitate the safe return of the child to his ~~or her~~ own home as expeditiously as possible or to make other permanent arrangements for the child if such return is not feasible. (5-8-09)( )

**b.** The alternate care plan must be included as part of the family service plan. (5-8-09)

**02. Written Alternate Care Plan.** The Department must ~~have~~ completed a written alternate care plan within thirty (30) days after a child has been placed in alternate care and at least every six (6) months thereafter. A copy of the alternate care plan will be provided to the child's parent, legal guardian, foster parent, Indian custodian, tribe, and to the child if he is over twelve (12) years of age. (5-8-09)( )

~~**a.** A parent or legal guardian and the child, to the extent possible, are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. (5-8-09)~~

~~**b.** The alternate care plan must include documentation that a parent or legal guardian have been provided written notification of: (5-8-09)~~

~~**i.** Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; (3-18-99)~~

~~**ii.** Any change of placement, when the child is relocated to another alternate care or institutional setting immediately, and no later than seven (7) days after placement; and (5-8-09)~~

~~**iii.** Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements. (3-30-01)~~

~~**e.** All parties involved in developing the alternate care plan, including the alternate care provider, parent or legal guardian, and the child, if of appropriate developmental age: (5-8-09)~~

~~**i.** Will be asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and (5-8-09)~~

~~**ii.** Will receive a copy of the alternate care plan from the Department. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**553. ASSIGNING REPORTS FOR ~~RISK~~ SAFETY ASSESSMENT.**

The Department must assign all reports of possible abuse, neglect, or abandonment of children for ~~risk~~ safety assessment, unless the field office has knowledge or information that discredits the report beyond a reasonable doubt. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**555. SUPERVISORY REVIEW - CERTAIN PRIORITY I AND II CASES.**

In all Priority I and II cases where the alleged victim of abuse, neglect, or abandonment is through the age of six (6), review by supervisory or team of all case documentation and other facts will be conducted within forty-eight (48) hours of initiation of the ~~risk~~ safety assessment. Such review will be documented in the file with the signature of the supervisor or team leader, time and date, whether additional ~~risk~~ safety-related issues will be pursued and by whom, and any planning for initiation of services. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**559. CHILD PROTECTION ~~IMMEDIATE~~ SAFETY AND COMPREHENSIVE ASSESSMENTS.**

The Department's ~~immediate~~ safety and comprehensive assessments must be conducted in a standardized format and must utilize statewide assessment and multi-disciplinary team protocols. The assessment must include contact with the child(ren) ~~or children~~ involved and the immediate family and a records check for history with respect to child protection issues. (3-30-07)( )

**01. Interview of a Child.** The interview of a child concerning a child protection report must be conducted: (3-30-07)

**a.** In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including multiple interviews; (3-30-07)

**b.** By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

**c.** In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

**02. Interview of Family.** Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker

conducting the interview must: (3-30-07)

a. Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the family services worker and his supervisor must be given to ensure the family has a contact for questions and concerns that may arise following the visit; (3-30-07)

b. Determine if the family is of Indian heritage for the purposes of ICWA; (3-18-99)

c. Interview siblings who are identified as being at risk; and (3-18-99)

d. Not divulge the name of the person making the report of child abuse or neglect. (3-30-07)

**03. Collateral Interviews.** Any assessment of an abuse or neglect report must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. (3-30-07)

**04. Completion of a Comprehensive Assessment.** ~~An Immediate Protection/~~ Safety ~~Plan~~ Assessment will be completed on each referral assigned for assessment of abuse or neglect, or both. When ~~there are findings of moderate or higher risk~~ safety threats are identified in the safety assessment and ~~a~~ the case remains open for services, a comprehensive assessment must be completed ~~within thirty (30) days of initial contact with the child of concern.~~ (3-30-07)(    )

**05. Role of Law Enforcement.** Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include: (3-30-07)

a. Interviewing the alleged perpetrator; (3-18-99)

b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)

c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)

**06. Notification of the Person Who Made the Referral.** The Department must notify the person who made the child protection referral when the risk safety assessment has been completed. (3-30-07)(    )

## **560. DISPOSITION OF CHILD PROTECTION REPORTS.**

Within five (5) days following completion of risk safety assessments, the Department will determine whether the reports are substantiated or unsubstantiated. All persons who are the subject of a child protection risk safety assessment will be notified of the disposition of the assessment. (4-2-08)(    )

**01. Substantiated.** Child abuse, neglect, or abandonment reports are substantiated by one (1) or more of the following: (5-8-09)

- a. Witnessed by a family services worker, as defined in Section 011 of these rules; (4-2-08)
- b. A court determines, in an adjudicatory hearing, that a child comes within the jurisdiction of the Child Protective Act, Title 16, Chapter 16, Idaho Code; (5-8-09)
- c. A confession; (4-2-08)
- d. Corroborated by physical or medical evidence; or (4-2-08)
- e. Established by evidence that it is more likely than not that abuse, neglect, or abandonment occurred. (5-8-09)

**02. Unsubstantiated.** Child abuse, neglect, or abandonment reports are unsubstantiated when they are not found to be substantiated under Subsection 560.01 of this rule. For intradepartmental statistical purposes, the Department will indicate whether the unsubstantiated disposition of the ~~risk~~ **safety** assessment was due to: (~~5-8-09~~)( )

- a. Insufficient evidence; or (5-3-03)
- b. An erroneous report. (4-2-08)

**561. CHILD PROTECTION CENTRAL REGISTRY.**

The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, July 27, 2006, 120 Stat. 587, has directed the states to establish a central registry for the purpose of sharing information about persons who have substantiated reports of abuse, neglect, or abandonment against children. The Child Protection Central Registry was established under the authority of Section 16-1629(3), Idaho Code. The primary purpose of the Child Protection Central Registry is to aid the Department in protecting children and vulnerable adults from individuals who have previously abused, neglected, or abandoned children. The Child Protection Central Registry maintained by the Department is separate and apart from the central registry for convicted sexual offenders maintained by the Idaho State Police under Title 18, Chapter 83, Idaho Code. The Child Protection Central Registry provisions in this chapter of rules apply to ~~risk~~ **safety** assessments conducted by the Department after October 1, 2007. (~~5-8-09~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**568. COURT-ORDERED CHILD PROTECTION ~~RISK~~ **SAFETY** ASSESSMENT.**

When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court may order that an investigation/~~risk~~ **safety** assessment be conducted by the Department. Court orders

for preliminary child protective ~~risk~~ safety assessment and for any subsequent assessment the court may deem necessary will be served on the Department supervisor for child protection services in the field office in which the court has geographical jurisdiction. The child protection supervisor must immediately initiate the ~~risk~~ safety assessment and consult with the court promptly if there are any obstacles ~~proceeding~~ preventing its completion. Immediately upon completing the report, the Department must make a written report to the court. (4-2-08)( )

**569. PETITION UNDER THE CHILD PROTECTIVE ACT.**

If any incident~~et~~ of child abuse, neglect, or abandonment is substantiated through ~~an immediate~~ safety or comprehensive assessment, or both, or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department will request the prosecuting attorney to file a Child Protective Act petition. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**571. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT.**

Where no other community resources are available and when ordered by the district courts, the Department will, for a fee of thirty-five dollars (\$35) per hour, conduct ~~immediate~~ safety and comprehensive assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. (3-30-07)( )

**01. Requests From Private Attorney.** If a parent's attorney requests ~~an immediate~~ safety or comprehensive assessment, or both, and a report of findings regarding the fitness of a parent, the attorney must be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. (3-30-07)( )

**02. Conduct of the Assessment.** In conducting the assessment, the family services worker must explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family must be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. (3-30-07)

**03. Report to Court.** The family services worker will provide a report only to the Magistrate judge who ordered the assessment, and must use the Department's format for the assessment of need. The report must describe what was observed about the home conditions and the care of the child(ren). (3-30-07)

**04. Department Clients.** If the family is or has been a client of the Department, disclosure of information must comply with IDAPA 16.05.01, "Use and ~~Protection~~ Disclosure of Department Records." (5-8-09)( )

(BREAK IN CONTINUITY OF SECTIONS)

**702. ~~SERVICES TO BE PROVIDED IN LEGAL~~ CONDITIONS FOR GUARDIANSHIPS ASSISTANCE.**

~~In addition to the family services provided under these rules, the Department will provide the following:~~ The following conditions must be met for a child to be eligible for federally-funded or state-funded guardianship assistance. (5-8-09)( )

**01. ~~Preparation for Placement.~~ Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parent(s) and assisting the child with the transition into the home of the legal guardian(s). Assessment of Suitability. The Department or its contractor will determine the suitability of an individual to become a legal guardian for a specific child or sibling group through a guardianship study.** (5-3-03)( )

**02. Eligibility for Guardianship Assistance.** The Department will determine eligibility for guardianship assistance for each child placed in the legal custody of the Department prior to the finalization of the guardianship. The child will first be considered for eligibility for a federally-funded subsidy. Should the child be found ineligible for a federally-funded subsidy, the child will then be considered for a state-funded subsidy. ( )

**023. Guardianship and Foster Care Licensure.** To receive guardianship assistance, a potential legal guardian(s) must apply for and receive a foster care license before any child in the guardianship of the Department can be placed in their home. (5-3-03)( )

**04. Guardianship Assistance Agreements and Payments.** The Department and the prospective legal guardian must enter into a written agreement prior to the finalization of the guardianship. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate a child would receive if living in family foster care in Idaho. Eligibility for guardianship assistance is based on the child's needs. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. The Department will provide the prospective legal guardian with a copy of the agreement. All Guardianship Assistance Agreements must contain the following: ( )

**a.** The amount and manner in which the guardianship assistance payment will be provided to the prospective legal guardian; ( )

**b.** The manner in which the payment may be adjusted periodically in consultation with the legal guardian, based on the circumstances of the legal guardian and the needs of the child; ( )

**c.** Any additional services and assistance for which the child and legal guardian will be eligible under the agreement; ( )

- d.** The procedure by which the legal guardian may apply for additional services; ( )
- e.** A statement that the agreement will remain in effect without regard to the state of residency of the legal guardian; ( )
- f.** The procedure by which the Department will make a mandatory annual evaluation of the need for continued assistance and the amount of the assistance; and ( )
- g.** Guardianship assistance payments are prospective only. There will be no retroactive benefits or payments. ( )

~~**03. Financial Assistance to Obtain Guardianship.** For potential legal guardian(s) who are not able to afford the attorney and court costs to obtain legal guardianship of a child in the Department's guardianship, financial assistance may be available from the Department. Financial assistance may be provided regardless of the guardian's state of residence. (5-3-03)~~

~~**04. Eligibility for Guardianship Assistance.** A determination of eligibility for guardianship assistance must be made for each child placed in a legal guardianship through the Department prior to the finalization of the guardianship. Eligibility for guardianship assistance is based on the child's identified needs, and requires completion of the legal termination of parental rights and documentation of unsuccessful efforts to place the child for adoption. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. (3-30-07)~~

~~**05. Guardianship Assistance Agreement.** The region will negotiate a written guardianship assistance agreement with the prospective legal guardian(s). The agreement must be fully executed by all parties prior to the finalization of the guardianship in order to be valid. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate the child would receive if he or she were living in family foster care in Idaho. Idaho Medicaid benefits can only be used in Idaho. There is no reciprocity with other state's Medicaid programs. Guardianship benefits are subject to availability and are to be reviewed by the Department and the legal guardian(s) at least annually. This benefit terminates on the child's eighteenth birthday regardless of the child's academic standing, physical, or developmental delays. (3-30-07)~~

~~**06. Revocation of Legal Guardianship.** Any party including the Department or the child, if age fourteen (14) or older, may petition the court to have the legal guardian(s) removed. Guardianship assistance is terminated when a court revokes the guardianship. (5-3-03)~~

~~**07. Termination of Guardianship Assistance When Child Leaves Home of the Legal Guardian(s).** If guardianship is revoked and the child(ren) are returned to the Department's guardianship, guardianship assistance will be terminated. If it is anticipated that another legal guardian(s) will be appointed by the court, the new guardian(s) will need to complete application for guardianship assistance before the guardianship is finalized. The guardian(s) is required to immediately report to the Department any reason which would make them ineligible to receive guardianship assistance, such as, the child leaves the home, the child marries or enters the~~



~~military.~~

~~(5-3-03)~~

~~**08. Retroactive Benefits.** Legal guardians appointed on or before July 1, 2001, are not eligible for guardianship assistance. There will be no retroactive benefits paid by the Department for a child whose legal guardian(s) was appointed before July 1, 2001 or for guardians who did not negotiate a guardianship assistance agreement prior to the finalization of the guardianship.~~

~~(5-3-03)~~

**05. Termination of Guardianship Assistance.** Federally-funded or state-funded guardianship assistance benefits and cash payments are automatically terminated when: ( )

**a.** A court terminates the legal guardianship or removes the legal guardian; ( )

**b.** The child no longer resides in the home of the legal guardian, and the legal guardian no longer provides financial support for the child; ( )

**c.** The child has reached the age of eighteen (18) years, regardless of the child's educational status or physical or developmental delays; or ( )

**d.** The child marries, dies, or enters the military. ( )

**06. Administrative Review for Guardianship Assistance.** The prospective legal guardian has twenty-eight (28) days from the date of the Department's notification of the guardianship assistance determination, to request an administrative review. The determination will be reviewed by the FACS Division Administrator, and a decision will be rendered to either affirm, reverse, or modify, the decision. The Department will notify the individual, by mail, of the FACS Division Administrator's decision, of his right to appeal, and procedures for filing an appeal according to requirements in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**703. FEDERALLY-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENTS, AND BENEFITS.**

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a federally-funded guardianship assistance for an eligible child and a relative guardian. ( )

**01. Eligibility.** A child is eligible for a federally-funded guardianship if the Department determines the child meets the following: ( )

**a.** Is fourteen (14) years of age, or older, sometime during the consecutive six- (6) month residence with the prospective relative legal guardian as specified in Subsection 703.01.c. of this rule; ( )

**b.** Has been removed from his or her home pursuant to a voluntary placement agreement, or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; ( )

**c.** Being returned home or adopted are not appropriate permanency options for the child; ( )

**d.** Has been eligible for Title IV-E foster care maintenance payments during at least six (6) consecutive months during which the child resided in the home of the prospective relative legal guardian who was licensed or approved as meeting the licensure requirements as a foster family home. While it is not required that Title IV-E foster care maintenance payments have been paid on behalf of the child during the six-month timeframe, it is required the child meet all Title IV-E foster care maintenance payment eligibility criteria in the home of the fully licensed or approved relative foster parent for a consecutive six- (6) month period to be eligible for Title IV-E guardianship assistance payment with that prospective relative legal guardian; ( )

**e.** Has been consulted regarding the legal guardianship arrangement; and ( )

**f.** Has demonstrated a strong attachment to the prospective relative legal guardian, and the relative legal guardian has a strong commitment to caring permanently for the child. ( )

**02. Siblings of an Eligible Child.** ( )

**a.** The Department may make guardianship assistance payments in accordance with a guardianship assistance agreement on behalf of each sibling of an eligible child, under the age of eighteen (18), who is placed with the same relative under the same legal guardianship arrangement if the Department and the relative legal guardian agree that the placement is appropriate. ( )

**b.** Nonrecurring expenses associated with obtaining legal guardianship of the eligible child's siblings are available to the extent the total cost does not exceed two thousand dollars (\$2,000). ( )

**c.** The agency is not required to place siblings with the relative legal guardian of the child at the same time with the eligible child for the siblings to qualify for a cash payment. ( )

**d.** A sibling of the eligible child does not have to meet the eligibility criteria for the relative legal guardian to receive a guardianship assistance payment or for the relative legal guardian to receive nonrecurring expenses. ( )

**03. Medicaid.** A child who is eligible for federally-funded relative guardianship assistance is eligible for Title XIX Medicaid in the state where the child resides. ( )

**04. Case Plan Requirements.** A child who is eligible for federally-funded relative guardianship assistance must have a case plan that includes: ( )

**a.** How the child meets the eligibility requirements; ( )

**b.** Steps the agency has taken to determine that return to the home or adoption is not appropriate; ( )

**c.** The efforts the agency has made to discuss adoption with the child's relative foster parent and the reason why adoption is not an option; ( )

**d.** The efforts the agency has made to discuss the legal guardianship and the guardianship assistance with the child's parent or parents, or the reason the efforts were not made; ( )

**e.** The reason why a permanent placement with a prospective relative legal guardian and receipt of a guardianship assistance payment is in the child's best interests; and ( )

**f.** If the child is not placed with siblings, a statement as to why the child is separated from his siblings. ( )

**05. Criminal History and Background Checks.** To be eligible for a federally-funded guardianship assistance payment, all prospective legal guardians and other adult members of the household must receive a criminal history and background check clearance, according to the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." As a licensed foster parent, if the prospective relative legal guardian has already received a clearance, another check is not necessary. ( )

**06. Nonrecurring Expenses.** The Department will reimburse the cost, up to two thousand dollars (\$2,000), of nonrecurring expenses associated with obtaining a federally-funded legal guardianship for an eligible child. ( )

**704. STATE-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENT, AND BENEFITS.**

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a state-funded guardianship assistance for an eligible child and his legal guardian. ( )

**01. Eligibility for State-Funded Guardianship Assistance.** A child is eligible for a state-funded guardianship assistance if the Department determines the child meets the following: ( )

**a.** Assistance is based on the child's identified needs; ( )

**b.** The child's parents have had their parental rights legally terminated; and ( )

**c.** There is documentation of unsuccessful efforts to place the child for adoption. ( )

**02. Limitations on State-Funded Guardianship Assistance.** State-funded guardianship assistance is subject to state appropriations and availability of state general funds. ( )

**03. Medicaid Benefits Under State-Funded Guardianship Assistance.** State-funded guardianship assistance may include Medicaid benefits for the child(ren) receiving payment. These Medicaid benefits may only be used in Idaho. If the legal guardian moves to another state, he will be required to apply for Medicaid for the child(ren) in the new state of residency. ( )

**04. Nonrecurring Expenses.** In cases where state-funded guardianship assistance is

being considered, if the potential legal guardian is not able to afford the attorney and court costs to obtain legal guardianship of a child in the legal custody of the Department of Health and Welfare, financial assistance may be available from the Department. Financial assistance for legal fees may be provided regardless of the legal guardian's state of residence. ( )

7035. -- 709. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.**

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department, a report is required under Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights must include: (5-8-09)

- 01. Allegations.** The allegations contained in the petition. (3-30-01)
- 02. Investigation.** The process of the assessment and investigation. (3-30-01)
- 03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)
- 04. Medical Information.** The information forms regarding the child, birth mother, and birth father will be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (5-8-09)
- 05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family. (3-30-01)
- 06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement under Section 16-1513, Idaho Code. (5-8-09)
- 07. Planning.** Proposed plans for the child consistent with: (3-30-01)
  - a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)
  - b.** ~~The Multi-Ethnic Placement Act and Interethnic Placement Act and regulations~~

The Adoption and Safe Families Act of 1997, which prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family, ~~which must include and requires~~ individualized documentation regarding ~~this~~ the child's needs in permanent placement. (5-8-09)( )

**08. Compliance with the Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)

**a.** Notification of the pending proceedings by registered mail with return receipt requested, to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location cannot be determined; (5-3-03)

**b.** Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)

**c.** Notification that if the court determines indigency, the parent(s) or Indian custodian(s) have the right to court-appointed counsel; (5-8-09)

**d.** Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)

**e.** A recommendation and the reasons therefor as to whether or not termination of the parent and child relationship is in the best interest of the child; and (3-30-01)

**f.** Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**900. ADOPTION ASSISTANCE.**

The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Services, the Division will respond with a determination of the child's eligibility within forty-five (45) days. (3-30-07)

**01. Determination of Eligibility for Title IV-E Adoption Assistance.** Child and Family Services will determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of

1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance: (5-8-09)

**a.** Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria at the time of removal from his home. (5-8-09)

i. If the child is removed from his home in accordance with the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home. (5-8-09)

ii. If the child is removed from the home in accordance with a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be eligible for Title IV-E adoption assistance. (5-8-09)

**b.** Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs. (5-3-03)

i. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits; (5-3-03)

ii. The circumstances of a child's removal from his home or whether the public child welfare agency has responsibility for the child's placement and care ~~is~~ are not relevant. ~~(5-3-03)~~( )

**c.** Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs. (5-3-03)

i. The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held which ~~lead~~ to the removal of the child from his home; ~~(5-3-03)~~( )

ii. At the time of the voluntary relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home. (5-8-09)

**d.** Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs. (5-3-03)

i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and child at the time the adoption petition is filed; and (5-3-03)

ii. The child continues to reside in the foster home with his minor parent until the

adoption petition has been filed. If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances. (5-3-03)

e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs. (5-3-03)

i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. (5-3-03)

ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency. (5-3-03)

iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption. (5-3-03)

iv. It is the responsibility of the placing state to determine whether the child meets the definition of special needs and to pay the subsidy in a subsequent adoption. (5-3-03)

**02. Special Needs Criteria.** The definition of special needs includes the following factors: (3-30-07)

a. The child cannot or should not be returned to the home of the parents as evidenced by an order from a court of competent jurisdiction terminating parents rights or its equivalent; and (3-29-10)

b. The child has a physical, mental, emotional, or medical disability, or is at risk of developing such disability based on ~~known information regarding the birth family and child's history;~~ the child's experience of documented physical, emotional, or sexual abuse, or neglect; or ~~(3-18-99)( )~~

c. The child's age makes it difficult to find an adoptive home; or (3-18-99)

d. The child is ~~a member of a sibling group that must not be placed apart~~ being placed for adoption with at least one (1) sibling; and ~~(5-3-03)( )~~

e. The State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. ~~(5-3-03)( )~~

**03. Determination of Eligibility for State Funded Adoption Assistance.** Children in state custody who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state-funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy. (3-30-07)

**04. Interjurisdictional Adoptions.** When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho is responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E adoption assistance benefits. (3-30-07)

**05. International Adoptions and Adoption Assistance.** A child who meets the criteria for special needs under Subsection 900.02 of this rule, who is not a citizen or resident of the United States, and who was adopted outside of the United States or was brought into the United States for the purpose of being adopted, is not eligible to receive adoption assistance. This restriction does not prohibit adoption assistance payments for a child described in this Subsection who is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of the child by the adoptive parents. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**910. TYPES AND AMOUNTS OF ASSISTANCE.**

The needs of the child and the family, including any other children in the family, will be considered in determining the amount and type of support to be provided. Assistance may include the following: (3-30-07)

**01. Nonrecurring Adoption Reimbursement.** Payment for certain one (1) time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. The child's eligibility must be determined and the contract for reimbursement must be fully executed prior to the finalization of the adoption. The reimbursement is paid only after the adoption finalizes. The expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption finalization of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. Children for whom the adoption has been finalized without a negotiated Nonrecurring Expenses Reimbursement Agreement are not eligible to apply for these benefits. (3-29-10)

**02. Monthly Cash Payment.** Financial assistance in the form of a monthly cash payment may be established to assist the adoptive family in meeting the additional expenses of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and based on the family's circumstances and what additional resources are needed to incorporate the child into the adoptive family. The amount must not exceed the rate for family foster care found in Subsections 483 and 484 of these rules, which would be made if the child were in a family foster home in Idaho. Payments received for treatment foster care, gifts, clothing, and school fees are not considered part of the family foster care rate. For children who meet the definition of special needs at Subsection 900.02 of these rules, no monthly cash payment is allowable until such time as the specific disability for which the child is known to be at risk



becomes evident. For children who are currently eligible for Personal Care Services (PCS), the *professional treatment* foster care rate **of up to a maximum of one thousand dollars (\$1,000) per month** may be used in negotiating the adoption assistance upon prior approval of the Department's Family and Community Services (FACS) Division Administrator. Benefits will continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need.

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

**03. Title XIX -- Medicaid Coverage.** Any child with special needs who has an adoption assistance agreement in effect is also eligible for medical coverage. A Title IV-E adoption assistance agreement provides Medicaid coverage in the state of Idaho and in all other states. Under a state-funded adoption assistance agreement, a child living in Idaho is eligible for Medicaid. If the family moves to another state, Medicaid may or may not be available. If Medicaid is not available in the new state, provisions for medical coverage must be contained in the adoption assistance agreement or in an amendment to the agreement. Families enrolled in a group health plan who plan to request to use Medicaid as the child's primary health care coverage must apply to the Idaho Health Insurance Premium Payment (HIP) program at the time of benefit negotiation. Medicaid provides secondary coverage after the family's health insurance has reached its benefit limit. All services reimbursed by Medicaid must be determined to be medically necessary. Prior authorization may be required for some Medicaid reimbursable services. Medicaid benefits are available until the child reaches the age of eighteen (18), based upon an annual determination of continuing need.

(3-30-07)

**04. Title XX -- Social Services.** Any child with special needs who has an Adoption Assistance Agreement is also eligible for state-authorized Title XX - Federal Social Services Block Grant funded services.

(3-30-07)

**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 - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is **July 1, 2010**. This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005, Idaho Code.

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

**The Department has amended these rules to reflect the current statutory definitions for the following terms: daycare center, group daycare, and family daycare. Also, the term daycare facility has been deleted from this chapter of rules.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, pages 47 through 79](#).**

**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.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Marian Woods at (208) 334-0683.

DATED this 12th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

***THIS NOTICE PUBLISHED WITH THE 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.

***THE FOLLOWING IS THE TEXT OF 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)(    )

**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~~ing, or certification of~~ maintaining, and operating the following facilities or programs within Idaho: (    )

**a.** Daycare centers; (    )

**b.** Group daycare facilities; (    )

**c.** Family daycare homes, voluntarily; (    )

**d.** ~~f~~Foster homes; (    )

**e.** ~~e~~Children’s agencies, ~~and~~; (    )

**f.** ~~e~~Children’s residential care facilities, including non-accredited residential schools; (    )

**g.** ~~e~~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; (    )

**h.** ~~e~~Children's therapeutic outdoor programs; (    )

**i.** ~~a~~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 (    )

**j.** ~~f~~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)(    )

**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. ( )

**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. ( )

**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. ( )

**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: ( )

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

**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; ( )

**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; ( )

**d.** The provision of occasional care exclusively for children of parents who are simultaneously in the same building; ( )

**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 ( )

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

**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: ( )

**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; ( )

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 ( )

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. ( )

**(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)~~( )

**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. ( )

**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. ( )

**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~~)( )

**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~~)( )

**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~~)( )

**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~~)( )



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 ~~1309~~ 309 of these rules and in Sections 39-1105, 39-1113, and 39-1114, Idaho Code. ~~(3-30-07)~~( )

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)~~( )

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: ( )

a. Is a permanent resident of or an adult living in a licensed foster home ~~or~~: ( )

b. Is a resident or adult living in, employee, contractor, volunteer, or staff member of a licensed residential facility; or ~~(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. ( )

**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)~~( )

**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. ( )

**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.** ( )

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

**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. ( )

**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. ( )

**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)

**113. 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~~)(    )

**157. Daycare Center.** A place or facility providing daycare for compensation for thirteen (13) or more children. (~~3-30-01~~)(    )

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

**179. 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)

~~1820~~. **Director.** Director of the Idaho Department of Health and Welfare or designee. (3-30-01)

~~1921~~. **Family Daycare Home.** A home, place, or facility providing daycare ~~for~~ six (6) or fewer children ~~during part of a twenty-four (24) hour day.~~ (3-30-01)( )

~~202~~. **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)

~~213~~. **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)

~~224~~. **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)( )

~~235~~. **Group Daycare Facility.** A home, place, or facility providing daycare ~~for~~ seven (7) to twelve (12) children. (3-30-01)( )

~~246~~. **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)

~~267~~. **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)

~~278~~. **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)

~~289~~. **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. ( )

**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)~~( )

**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. ( )

**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)~~( )

**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)

~~143.~~ **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. ( )

~~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)

~~1720.~~ **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)

~~1821.~~ **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.

( )

**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. ( )

**1924. 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)

**216. 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)( )

**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)~~

**031. 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)(    )

**a02. 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)(    )

**b03. Responsible for Agency Staff Knowledge.** The operators ~~s~~ of a child care facilities ~~y and or~~ agencies ~~y 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 is 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)(    )

**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)(    )

**ia.** Changes of management or address; ~~or~~ (3-30-01)(    )

**ib.** Upon suspension or revocation of the license ~~or certification~~ by the Department; (3-30-01)(    )

or

**iiic.** Upon voluntary discontinuation of service. (3-30-01)

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

~~An~~ Applications ~~s~~ 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)(    )

~~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)( )

**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)( )

**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)( )

- 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)( )

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)( )

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)( )

- 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)~~( )
- 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)~~( )

- 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)~~( )

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

**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)( )

**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)( )

**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. ( )

**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. ( )

(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)( )

**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. ( )

**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)( )

**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)( )

#### 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)( )

#### 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 39-11~~720~~20, Idaho Code, or the Child Care Licensing Reform Act, Sections 39-120~~81~~1 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)( )

**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)( )

**02. Other Misconduct.** The applicant, foster parent, operator, or the person proposed as chief executive officer ~~except for daycare facilities~~:

(3-30-01)( )

**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)( )

(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)( )

**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)( )

**01. Endangers Health or Safety.** Any condition that endangers the health or safety of any resident or child.

(7-1-09)( )

**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)( )

**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)( )

**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)( )

**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)( )

**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)( )

**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)( )

**(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)( )

**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)( )

**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)

~~c. 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)

~~c. 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 39-1115(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. ( )

**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. ( )

**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. ( )

**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. ( )

**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: ( )

**a.** Owners, operators, and staff; ( )

**b.** All other individuals thirteen (13) years of age or older who have unsupervised direct contact with children; or ( )

**c.** All other individuals thirteen (13) years of age or older who are regularly on the premises. ( )

**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: ( )

**a.** Juvenile justice records of adjudication of the magistrate division of the district court; ( )

**b.** County probation services; and ( )

**c.** Department records. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**01. Completed and Signed Application.** A completed application form signed and dated by the applicant. ( )

**02. Licensing Fee.** The applicant must pay the appropriate licensing fee prior to the issuance of a daycare license by the Department. ( )

**03. Inspection Reports.** The following reports must be submitted to the Department with the application: ( )

- a.** Proof that the proposed facility meets local building code, where required; ( )
- b.** Proof that the proposed facility meets local electrical code, where required; ( )
- c.** Proof that the proposed facility meets fire code, where required; and ( )
- d.** Proof that the facility meets local planning and zoning requirements. ( )
- 04. Proof of Insurance.** The applicant must provide proof of current fire and liability insurance coverage for the daycare facility. ( )
- 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. ( )
- 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. ( )
- 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. ( )
- 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. ( )
- 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. ( )
- 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. ( )
- 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. ( )
- 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: ( )

**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; ( )

**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 ( )

**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. ( )

**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. ( )

**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. ( )

**05. Incomplete Application.** The Department is not required to take any action on an application until the application is complete. ( )

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

**07. List of Licensed Daycare Facilities.** The Department will maintain a list of all licensed daycare facilities for public use. ( )

**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: ( )

**01. Legal name.** ( )

**02. Proof of Age.** ( )

- 03. Phone Number.** ( )
- 04. Record of Training.** ( )
- 05. Verification of Criminal History and Background Check Clearance.** ( )
- 06. Results of Juvenile Justice Records.** The results of juvenile justice records, when applicable. ( )
- 07. Certification.** Verification of Pediatric Rescue Breathing, Infant-Child CPR, and First Aid Treatment certification from a certified instructor, when applicable. ( )
- 08. Record of Hours.** The times, dates, and records of hours on the premises each day. ( )

**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: ( )

- 01. Child's Full Name.** ( )
- 02. Date of Birth.** ( )
- 03. Parent or Guardian's Name, Address, and Contact Information.** ( )
- 04. Emergency Contact Information.** ( )
- 05. Child's Health Information.** ( )
- a.** Immunization record or waiver of exemption form or statement; ( )
- b.** Any medical conditions that could affect the care of the child; ( )
- c.** Medications the child is taking or may be allergic to. ( )
- 06. Record of Attendance.** The times, dates, and record of attendance each day. ( )

**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. ( )

- 01. Daycare Centers Child-Staff Ratios and Maximum Group Size.**



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

( )

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

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

( )

**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. ( )

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

**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; ( )

**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 ( )

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. ( )

**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: ( )

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

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

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

**06. Overnight Daycare.** For daycare operators providing overnight care of children, the following must apply: ( )

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

b. A staff member must be awake and on duty to release and receive a child. ( )

**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. ( )

**01. Child Development Training.** Training must be related to continuing education in child development. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**a.** Exit doors must open from the inside without the use of a key or any special knowledge or effort. ( )

**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: ( )

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

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. ( )

**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. ( )

**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. ( )

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

ii. In lieu of egress windows, an approved exit door is acceptable. ( )

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. ( )

**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. ( )

**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. ( )

**351. FACILITY CAPACITY AND DETERMINING OCCUPANT LOAD.**

Occupant load is determined by the local fire official or designee. ( )

**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. ( )

**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. ( )

- a.** Exit doors must swing in the direction of egress. ( )
- b.** Exit doors from rooms, if provided with a latch, must have panic hardware installed. ( )
- 03.** Exit Signs. Exit signs must be installed at required exit doorways and wherever else necessary to clearly indicate the direction of egress. ( )

**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. ( )

**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. ( )

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

**03. Fire Extinguishers.** Approved fire extinguishers must be maintained properly. ( )

**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. ( )

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

**06. Smoke Detectors.** Smoke detectors must be installed and maintained in the following locations: ( )

**a.** On the ceiling or wall outside or each separate sleeping area in the immediate vicinity of bedrooms; ( )

**b.** In each room used for sleeping purposes; and ( )

**c.** In each story within a facility including basements. ( )

**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. ( )

**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). ( )

**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: ( )

**01. Evacuation.** Procedures and policies for accounting for staff and children after an evacuation is completed. ( )

**02. Assembly Point.** Evacuation plan and assembly point for children and staff. ( )

**03. Locations of Facility Exits.** ( )

**04. Evacuation Routes.** ( )

**05. Location of Fire Alarms.** ( )

**06. Location of Fire Extinguishers.** ( )

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

**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. ( )

**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. ( )

**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." ( )

**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. ( )

**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." ( )

**b.** Individuals preparing food must use proper hand-washing techniques, minimize bare hand contact with food, and wear clean clothes. ( )

**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. ( )

**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. ( )

**05. Food Contact Surfaces.** Food contact surfaces must be kept clean and sanitized, including counters, serving tables, high chair trays, and cutting boards. ( )

**06. Dishwashing Sanitizing.** Dishes, glasses, utensils, silverware and all other objects used for food preparation and eating must be sanitized using appropriate sanitizing procedures. ( )

**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. ( )

**08. Garbage.** Garbage must be kept covered or inaccessible to children. ( )

**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. ( )

**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. ( )

**11. Sleeping Areas.** Children sleeping at the facility must have separate cots, mats, or beds and blankets. ( )

**12. Restrooms, Water Supply, and Sewage.** All daycare facilities must have restrooms. ( )

**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. ( )

**b.** Plumbing and bathroom fixtures must be in good condition. ( )

**c.** In addition, daycare centers must comply with requirements of the International Building Code incorporated by reference in Section 004 of these rules. ( )

**13. Water Supply.** The facility's water supply must meet one (1) of the following requirements: ( )

**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 ( )

**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. ( )

**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. ( )

**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.” ( )

**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. ( )

**a.** Any individual under the influence of alcohol or drugs must not be permitted at or in the daycare facility. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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.” ( )

**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. ( )

**01. Telephone.** An operable telephone or cell phone must be available on the facility



at all times and the following conditions must apply: ( )

**a.** The telephone number used to meet this standard must be made available to parents and guardians. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**a.** Ammunition must be stored in a locked container separate from firearms. ( )

**b.** Matches, lighters, and any other means of starting fires must be kept away from and out of the reach of children. ( )

**c.** Other weapons that could cause harm to children must be stored out of reach of children. ( )

**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. ( )

**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. ( )

**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. ( )

**01. Appliances and Electrical Cords.** All appliances, lamp cords, exposed light

sockets and electrical outlets must be protected to prevent electrocution. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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: ( )

**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: ( )

**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. ( )

**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. ( )

**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. ( )

**c.** Wading pools and buckets must be empty when not in use. ( )

**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. ( )

**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. ( )

**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. ( )

**08. Outdoor Play Areas and Toys.** Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. ( )

**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. ( )

**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. ( )

**c.** Outdoor play areas must be designed so that all parts are always visible and are easily supervised by a staff member. ( )

**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. ( )

**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. ( )

**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. ( )

**01. Posting of License and Other Information.** ( )

**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. ( )

**b.** A daycare must post contact information of the Department and the statewide number to file daycare complaints. ( )

**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. ( )

**03. Critical Incidents.** A daycare operator must report any of the following to the Department within twenty-four (24) hours: ( )

**a.** Serious injury or death of a child at the facility; ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**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. ( )

**~~301~~396. -- 399. (RESERVED).**

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING**

**DOCKET NO. 16-0602-1003**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized under Sections 39-1211 and 56-1004A, Idaho Code.

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

**The Department is amending the proposed rule based on comments received from the Legislative Services Office (LSO). The amendments clarify when an adult member of a foster care household who is age 18 to 21 must have a criminal history and background check.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 346 and 347.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Kathy Morris at (208) 334-5706.

DATED this 12th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized under Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 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:

**Due to practice issues that have arisen in the process of licensing foster homes, the requirements for criminal history and background checks are being clarified.**

**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. These rule changes are being made to bring the rules into alignment with the Department's Title IV-E State Plan and applicable federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 18th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0602-1003**

**403. MEMBER OF HOUSEHOLD QUALIFICATIONS AND SUITABILITY.**

To assure the safety and well-being of children, a member of the household ~~shall~~ **must** be in compliance with the requirements specified in these rules. ~~(3-30-01)~~(\_\_\_\_)

**404. CRIMINAL HISTORY AND BACKGROUND CHECKS FOR FOSTER CARE LICENSE.**

All applicants for a foster care license and other adult members of the household must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks," and the following requirements: (3-30-07)

**01. Required Procedures.** Each applicant for a foster home license, and any other adult member of the household, must participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

**02. Change in Household Membership.** By the next working day after another adult begins residing in a licensed foster home, a foster parent must notify the children's agency of the change in household membership and assure that the new adult member of the household will participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

**03. Foster Parent's Child Turns Eighteen.** A foster parent's child who turns eighteen (18) and ~~continues to~~ lives **continuously** in the home is not required to have a criminal history and background check **except as specified in Subsection 404.03.c. of this rule.** ~~(3-30-07)~~(\_\_\_\_)

**a.** After turning eighteen (18) years of age, if the foster parent's adult child moves out of no longer lives in the foster parent's home for longer than ninety (90) days and returns to live subsequently resumes living in the licensed foster home as a permanent resident, he will be considered an adult member of the household and must complete a criminal history and background check within fifteen (15) days of his return from the date he became an adult member of the household. ~~(3-30-07)~~(\_\_\_\_)

**b.** If the adult child leaves the foster home for the purpose of higher education or military service, and **periodically** returns **to the home** for less than ninety (90) days, he is not considered to ~~reside in the licensed foster home~~ **be an adult member of the household** and is not required to complete a criminal history and background check. **While in the home, #he** cannot have any unsupervised direct care responsibilities for any foster children in the home. Should he remain in the foster home for **more than** ninety (90) days ~~or longer~~, he **will immediately be considered an adult member of the household and** must complete a criminal history and background check within fifteen (15) days **from the date he became an adult member of the household.** ~~(3-30-07)~~(\_\_\_\_)

c. If the adult child continues to live in his parent's licensed foster home or on the same property, he must complete a criminal history and background check within fifteen (15) days of turning twenty-one (21). This requirement is not necessary if the adult child has completed a criminal history and background check between the ages of eighteen (18) and twenty-one (21). (3-30-07)

**04. Criminal History and Background Check at Any Time.** The Department retains the authority to require a criminal history and background check at any time on individuals who are ~~permanent residents of~~ residing in a licensed foster home or on the foster parent's property. (3-30-07)( )



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)**

**DOCKET NO. 16-0612-1001**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

**The Department amended these rules to exclude the temporary census income from countable income. This rule was adopted as a temporary rule that published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 23 and 24. The complete text of the proposed rule was published in the May 5, 2010, Idaho Administrative Bulletin, Vol. 10-5, pages 35 and 36. This pending rule is being adopted as proposed.**

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

**This program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for ICCP participants. The estimated impact to federal funds is \$168,600.**

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

DATED this 1st day of October, 2010.

Tamara Prisock  
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phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 19, 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. This rule was adopted as a temporary rule with an effective date of January 1, 2010. The temporary rule docket published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 23 and 24.

**The U.S. Census is conducted every ten years and the census for 2010 requires the Census Bureau to hire employees to conduct this field work. The State of Idaho has received approval from the Centers for Medicare and Medicaid Services to exempt temporary income earned by individuals temporarily working for the Census Bureau on the 2010 Census. The Department is aligning this chapter of rules with other Department rules to exclude the temporary census income from countable income in order to treat income for ICCP the same as other benefit programs. For ICCP participants, the temporary employment income cannot exceed a time period of six months.**

**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:

**This program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for ICCP participants. The estimated impact to federal funds is \$168,600.**

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact

Annie Dalgetty at (208) 334-5686.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 26, 2010.

DATED this 29th day of March, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-1001***

**302. EXCLUDED INCOME.**

The following sources of income are not counted as family income. (4-2-08)

**01. Earned Income of a Dependent Child.** Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. (4-2-08)

**02. Income Received for Person Not Residing With the Family.** Income received on behalf of a person who is not living in the home. (4-2-08)

**03. Educational Funds.** All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (4-2-08)

**04. Assistance.** Assistance to meet a specific need from other organizations and agencies. (4-2-08)

**05. Lump Sum Income.** Non-recurring or lump sum income is excluded as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds current income limits for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months. (4-2-08)

**06. Loans.** Loans with written, signed repayment agreements. (4-2-08)

**07. TAFI and AABD Benefits.** TAFI and AABD benefits. (4-2-08)

**08. Foster Care Payments.** Foster care payments. (4-2-08)

**09. AmeriCorps/VISTA Volunteers.** Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under 42 U.C.S. 5044, P.L. 93-113, Title IV, Section 404(g) are excluded as income. (4-2-08)

**10. Income Tax Refunds and Earned Income Tax Credits.** Income tax refunds and

earned income tax credits are excluded as income. (4-2-08)

**11. Travel Reimbursements.** Reimbursements from employers for work-related travel. (4-2-08)

**12. Tribal Income.** Income received from a tribe for any purpose other than direct wages. (4-2-08)

**13. Foster Parents' Income.** Income of licensed foster parents is excluded when determining eligibility for a foster child. Income is counted when determining eligibility for the foster parent's own child(ren). (4-2-08)

**14. Adoption Assistance.** Adoption assistance payments are excluded from income. (4-2-08)

**15. Child Support Payments.** Court-ordered child support payments made by the parent(s) who receive the child care benefits are deducted from income used to determine eligibility. Both the legal obligation to pay child support and the actual amount paid must be verified. (4-2-08)

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

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)**

**DOCKET NO. 16-0612-1002**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. The effective date for these rule changes is May 1, 2011.

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

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

**The Idaho Child Care rules are being amended to be more effective and user friendly for Idahoans to access the program. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 275 through 286.](#)**

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

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

DATED this 5th day of November, 2010.

Tamara Prisock  
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(208) 334-5564 phone  
(208) 334-6558 fax  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code.

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

**Thursday, October 21, 2010 at 6:30 p.m.**

**Region IV Health and Welfare Office  
1720 Westgate Drive  
Suite D Conference Room  
Boise, ID**

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 Idaho Child Care rules are being amended to be more effective and user friendly for Idahoans to access the program. These rules have been reorganized, repetitive requirements have been removed, and clarification has been added for how income and qualifying activity is calculated. Application time frames are being clearly defined in order to streamline eligibility determinations.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 for this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is clarifying existing language, reorganization of the current rule, and removing repetitive requirements.

**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 Rosie Andueza at (208) 334-5553.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 24th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-1002**

**012. -- ~~099~~49. (RESERVED).**

**APPLICATION REQUIREMENTS**  
**(Sections 050 through 069)**

**050. ICCP APPLICATION FOR BENEFITS.**

A family applying for child care benefits must submit a completed and signed application to the Department. ( )

**01. Application Received.** The Department will date stamp the application on the day the application is received. The applicant has thirty (30) days from the date the application is received by the Department to complete the application process by providing all required verifications. ( )

**02. New Application Required.** A new application is required if all requested verification is not provided within thirty (30) days from the date the application was received by the Department. The time limit can be extended by the Department for events beyond the Department's control. ( )

**03. Notification.** The Department will act on applications for child care benefits within thirty (30) days of receipt. The applicant will be notified in writing of the approval or denial of the application and of the applicant's right to appeal. ( )

**051. -- 069. (RESERVED).**

**FINANCIAL CRITERIA FOR ICCP ELIGIBILITY**  
**(Sections 070 through 099)**

*[Codified Section 100 has been moved and renumbered to proposed Section 070]*

~~**1070. APPLICATION AND INCOME LIMITS FOR CHILD CARE BENEFITS.**~~

~~*Child care benefits are payments from the Department to child care providers on behalf of eligible families. An application for assistance for child care benefits must be completed, signed by the applicant, and received by the Department. The date of the application is the date it is received by the Department. The applicant must be notified in writing of the approval or denial of the application and of the right to appeal, if applicable. In order to receive ICCP assistance the applicant must not exceed the gross income limits described in Subsections 100.01 and 100.02 of this rule.*~~ (4-2-08)

**01. Maximum Income Limits for ICCP Benefits.** ~~*The maximum income limit for eligibility for payment of ICCP benefits is based on one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines. Maximum income limits by family size are as follows: A family's income must be less than the published 2007 federal poverty guidelines for one hundred thirty-five percent (135%) of poverty for a family of the same size. The federal poverty guidelines are available on the U.S. Health and Human Services web site at <http://aspe.hhs.gov/poverty>.*~~ (4-2-08)( )

- a. One thousand five hundred forty dollars (\$1,540) for a household of two (2); (4-2-08)
- b. One thousand nine hundred thirty-two dollars (\$1,932) for a household of three (3); (4-2-08)
- c. Two thousand three hundred twenty-three dollars (\$2,323) for a household of four (4); (4-2-08)
- d. Two thousand seven hundred fifteen dollars (\$2,715) for a household of five (5); (4-2-08)
- e. Three thousand one hundred six dollars (\$3,106) for a household of six (6); (4-2-08)
- f. Three thousand four hundred ninety-eight dollars (\$3,498) for a household of seven (7); (4-2-08)
- g. Three thousand eight hundred eighty-nine dollars (\$3,889) for a household of eight (8); (4-2-08)
- h. Four thousand two hundred eighty-one dollars (\$4,281) for a household of nine: and (4-2-08)
- i. Four thousand six hundred seventy-two dollars (\$4,672) for a household of 10. (4-2-08)



**02. Additional Household Member.** Three hundred ninety-two dollars (\$392) is added to the maximum income limit for each additional family member. (4-2-08)

*[Codified Section 301 has been moved and renumbered to proposed Section 071]*

**3071. COUNTABLE INCOME.**

All gross earned and unearned income is counted in determining eligibility and the child care benefit amount, unless specifically excluded under Section 3072 of these rules. (5-8-09)(    )

*[Codified Section 302 has been moved and renumbered to proposed Section 072]*

**3072. EXCLUDED INCOME.**

The following sources of income are not counted as family income. (4-2-08)

**01. Earned Income of a Dependent Child.** Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. (4-2-08)

**02. Income Received for Person Not Residing With the Family.** Income received on behalf of a person who is not living in the home. (4-2-08)

**03. Educational Funds.** All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (4-2-08)

**04. Assistance.** Assistance to meet a specific need from other organizations and agencies. (4-2-08)

**05. Lump Sum Income.** Non-recurring or lump sum income is excluded as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds current income limits for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months. (4-2-08)

**06. Loans.** Loans with written, signed repayment agreements. (4-2-08)

**07. TAFI and AABD Benefits.** TAFI and AABD benefits. (4-2-08)

**08. Foster Care Payments.** Foster care payments. (4-2-08)

**09. AmeriCorps/VISTA Volunteers.** Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under 42 U.C.S. 5044, P.L. 93-113, Title IV, Section 404(g) are excluded as income. (4-2-08)

**10. Income Tax Refunds and Earned Income Tax Credits.** Income tax refunds and

earned income tax credits are excluded as income. (4-2-08)

**11. Travel Reimbursements.** Reimbursements from employers for work-related travel. (4-2-08)

**12. Tribal Income.** Income received from a tribe for any purpose other than direct wages. (4-2-08)

**13. Foster Parents' Income.** Income of licensed foster parents is excluded when determining eligibility for a foster child. Income is counted when determining eligibility for the foster parent's own child(ren). (4-2-08)

**14. Adoption Assistance.** Adoption assistance payments are excluded from income. (4-2-08)

**15. Child Support Payments.** Court-ordered child support payments made by the parent(s) who receive the child care benefits are deducted from income used to determine eligibility. Both the legal obligation to pay child support and the actual amount paid must be verified. (4-2-08)

**16. Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten-year U.S. Census. (1-1-10)T

*[Codified Section 303 has been moved and renumbered to proposed Section 073]*

**3073. AVERAGING SELF-EMPLOYMENT INCOME.**

**01. Annual Self-Employment Income.** When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if: (5-8-09)

**a.** The income is received over a shorter period of time than twelve (12) months; and (5-8-09)

**b.** The household receives income from other sources in addition to self-employment. (5-8-09)

**02. Seasonal Self-Employment Income.** A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover. (5-8-09)

*[Codified Section 304 has been moved and renumbered to proposed Section 074]*

**3074. CALCULATION OF SELF-EMPLOYMENT INCOME.**

The Department calculates self-employment income by adding monthly income to capital gains and subtracting a deduction for expenses as determined in Subsection 3074.03 of this rule.

(5-8-09)( )

**01. How Monthly Income is Determined.** If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past income does not reflect expected future income, a proportionate adjustment is made to the expected monthly income.

(5-8-09)

**02. Capital Gains Income.** Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department calculates capital gains using the federal income tax method. If the household expects to receive any capital gains income from self-employment assets during the certification period, this amount is added to the monthly income as determined in Subsection 3074.01 of this rule to determine the gross monthly income.

(5-8-09)( )

**03. Self-Employment Expense Deduction.** The Department uses the standard self-employment deduction in Subsection 3074.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection 3074.03.b. of this rule.

(5-8-09)( )

**a.** The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 303074.01 and 303074.02 of this rule; or

(5-8-09)( )

**b.** The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from the gross monthly self-employment income:

(5-8-09)

- i. Net losses from previous tax years; (5-8-09)
- ii. Federal, state, and local income taxes; (5-8-09)
- iii. Money set aside for retirement; (5-8-09)
- iv. Work-related personal expenses such as transportation to and from work; and (5-8-09)
- v. Depreciation. (5-8-09)

**075. PROJECTING MONTHLY INCOME.**

Income is projected for each month. Past income may be used to project future income. Changes expected during the certification period must be considered. Criteria for projecting monthly income is listed below:

( )

**01. Income Already Received.** Count income already received by the household

during the month. If the actual amount of income from any pay period is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. If no changes are expected, use the known actual pay period amounts for the past thirty (30) days to project future income. ( )

**02. Anticipated Income.** Count income the household and the Department believe the household will get during the remainder of the certification period. If the income has not changed and no changes are anticipated, use the income received in the past thirty (30) days as one indicator of anticipated income. If changes in income have occurred or are anticipated, past income cannot be used as an indicator of anticipated income. If income changes and income received in the past thirty (30) days does not reflect anticipated income, the Department can use the household income received over a longer period to anticipate income. If income changes seasonally, the Department can use the household income from the last season, comparable to the certification period, to anticipate income. ( )

**a. Full Month's Income.** If income will be received for all regular pay dates in the month, it is considered a full month of income. ( )

**b. If income will not be received for all regular pay dates in the month, it is not considered a full month of income and it is not converted.** ( )

**c. Income Paid on Salary.** Income received on salary, rather than an hourly wage, is counted at the expected monthly salary rate. ( )

**d. Income Paid at Hourly Rate.** Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly amount. ( )

**e. Fluctuating Income.** When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. ( )

**076. CONVERTING INCOME TO A MONTHLY AMOUNT.**

If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas below: ( )

**01. Weekly Amount.** Multiply weekly amounts by four point three (4.3). ( )

**02. Bi-Weekly Amount.** Multiply bi-weekly amounts by two point one five (2.15). ( )

**03. Semi-Monthly Amount.** Multiply semi-monthly amounts by two (2). ( )

**04. Salary Amount.** Use the exact monthly income if it is expected for each month of the certification period. ( )

**077. -- 099. (RESERVED).**

**NON-FINANCIAL CRITERIA**  
**(Sections 100 Through 199)**

*[Codified Section 100 has been moved and renumbered to proposed Section 070]*

**100. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**104. FAMILY COMPOSITION.**

A family is a group of individuals living in a common residence, whose combined income is considered in determining eligibility and the child care benefit amount. No individual may be considered a member of more than one (1) family in the same month. The following individuals are included in determining the family composition: (4-2-08)

**01. Married Parents.** Married parents living together in a common residence, includes biological, adoptive, step-parent, and foster parent. ~~(4-2-08)~~( )

**02. Unmarried Parents.** Unmarried parents who live in the same home and who have a child in common living with them. (4-2-08)

**03. Dependents.** Individuals who are claimed as dependents for tax purposes. (4-2-08)

**04. Minor Parent.** A minor parent and child are considered a separate family when they apply for child care benefits, even if they live with other relatives. (4-2-08)

**05. Individual Acting In Loco Parentis.** An individual acting in loco parentis who is eligible to apply for child care benefits. (4-2-08)

**105. ELIGIBLE CHILD.**

A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions: (4-2-08)

**01. Immunizations Requirements.** A child must be immunized in accordance with IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." Child care benefits can continue during a reasonable period necessary for the child to be immunized. Parents must provide evidence that the child has been immunized unless the child is attending school. (4-2-08)

**02. Citizenship or Alien Status Requirement.** A child must be one (1) of the following: (4-2-08)

- a. A citizen; (4-2-08)
- b. Living lawfully in the United States. (4-2-08)

**03. Child's Age Requirement.** A child must be under thirteen (13) years of age, with the following exceptions: (4-2-08)

a. A child thirteen (13) years of age or older may be eligible for child care benefits if he meets one (1) or more of the following criteria: (4-2-08)

i. A child is eligible for child care benefits until the month of his eighteenth birthday if he is physically or mentally incapable of self-care, as verified by a licensed mental health professional or licensed practitioner of the healing arts. (4-2-08)

ii. A child may be eligible for child care benefits until the month of his eighteenth birthday if a court order, probation order, child protection, or mental health case plan requires constant supervision. (4-2-08)

b. A child who is eligible under Subsection 105.03.a. **of this rule** may receive child care benefits until the month of his nineteenth birthday if he is a full-time student and is expected to complete secondary school no later than the month of his nineteenth birthday. ~~(4-2-08)~~( )

**04. Joint Custody.** A child may move from one (1) parent's home to the other parent's home on a regular basis. The child may be a member of either household, but not both households. If the parents cannot agree on the child's household for the child care case, the child is included in the household of the first parent to apply who is both income and activity eligible. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**QUALIFYING ACTIVITIES**  
(Sections 200 through 299)

**200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.**

To be eligible for child care benefits, ~~a family~~ each parent included in the household must need child care because they are engaged in one (1) of the qualifying activities listed in Subsections 200.01 through 200.05 of this rule. ~~(5-8-09)~~( )

**01. Employment.** The parent is currently employed. (4-2-08)

**02. Self-Employment.** The parent is currently self-employed in a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. Restrictions apply for self-employment as follows: (5-8-09)

a. For the first six (6) months of self-employment benefits assistance, actual activity

hours are used ~~to determine benefit assistance for a parent who is self-employed.~~ (5-8-09)( )

b. After receiving six (6) months of **self-employment child care** benefits ~~assistance~~, the number of ~~self-employment~~ activity hours ~~that will be used to calculate benefits can~~ **will** be limited ~~for a parent who is self-employed~~. To calculate the activity hours ~~allowed for ICCP benefit assistance~~, the gross monthly self-employment income is divided by the current federal minimum ~~hourly~~ wage ~~to determine the number of self-employment activity hours allowed~~. The **qualifying activity hours are the** lesser of the calculated activity hours or actual activity hours ~~will be used to determine the benefit assistance.~~ (5-8-09)( )

**03. Training or Education.** The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: (4-2-08)

- a. On-line classes cannot be counted as a qualifying activity for child care. (4-2-08)
- b. Persons with baccalaureate degrees or who are attending post-baccalaureate classes do not qualify for child care benefits. (4-2-08)
- c. More than forty (40) months of post-secondary education has been used as a qualifying activity. (4-2-08)

**04. Preventive Services.** The parent is receiving preventive services as defined in Section 011 of these rules. The Department will verify the continued need for preventive services at least every three (3) months. (4-2-08)

**05. Personal Responsibility Contract (PRC).** The parent is completing Personal Responsibility Contract (PRC) activities negotiated between the Department and the parent as described in IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families (TAFI) in Idaho." (4-2-08)

~~201. REPORTING REQUIREMENTS FOR FAMILIES.~~

~~01. Changes That Must Be Reported Within Ten Days.~~ A family who applies for or receives child care benefits must report the following changes within ten (10) days of the change: (4-2-08)

- ~~a. Anyone entering or leaving the household.~~ (4-2-08)
- ~~b. Change in the rates charged for child care services;~~ (4-2-08)
- ~~c. Change in the hours or nature of any qualifying activity;~~ (4-2-08)
- ~~d. Change in the number of hours worked;~~ (4-2-08)
- ~~e. A permanent change in rate of pay;~~ (4-2-08)
- ~~f. Any other permanent change in monthly income, either earned or unearned; and~~ (4-2-08)

- ~~g.~~ *A change of address for either the participant or the child care provider. (4-2-08)*
- ~~02.~~ *Changing Providers. (4-2-08)*
- ~~a.~~ *Changing Providers During the Month. A parent must notify ICCP by the twenty-fifth of the month of his intent to change providers for the next month of service. (4-2-08)*
- ~~b.~~ *Changing Providers Without Providing Notice. A parent who chooses to change providers without providing notice to the Department and who does not have good cause for failing to report the change, is responsible to pay the new provider for the next month of service. (4-2-08)*

## **201. PROJECTING QUALIFYING ACTIVITY HOURS.**

**01. Activity Hours.** Activity is projected for each month. Past activity may be used to project future activity if the employer and number of hours worked are the same and are expected to remain the same throughout the certification period. For students, a new class schedule must be submitted at the beginning of each semester or change in schedule. Hours for each qualifying activity must be projected individually and converted to a monthly amount. ( )

**01. Weekly Hours.** Multiply weekly amounts by four point three (4.3). ( )

**02. Bi-weekly Hours.** Multiplying bi-weekly amounts by two point one five (2.15). ( )

**03. Semi-Monthly Hours.** Multiplying semi-monthly amounts by two (2). ( )

**04. Monthly Hours.** Use the exact monthly hours if it is expected for each month of the certification period. ( )

202. -- ~~2399.~~ (RESERVED).

### **300. INCOME LIMIT.**

*A family's income must be less than the published 2007 federal poverty guidelines for one hundred thirty-five percent (135%) of poverty for a family of the same size. The federal poverty guidelines are available on the U.S. Health and Human Services web site at <http://aspe.hhs.gov/poverty/index.shtml>. (4-2-08)*

*[Codified Sections 301 through 304 have been moved and renumbered to proposed Sections 071 through 074, respectively]*

~~305. — 399.~~ (RESERVED).

## **400. REQUIREMENTS FOR IN-HOME CARE UNDER ICCP.**

Parents must contact the Department to request approval of in-home child care. Only parents who



have qualified activities outside their home will be considered for in-home care approval. The Department limits the approval of all in-home child care under ICCP to the following circumstances: (4-2-08)

**01. Three or More Children in the Home.** There are three (3) or more **ICCP eligible** children in the home who are ~~eligible for ICCP~~ **not in school at any time during the day** and require child care. (4-2-08)( )

**02. Fewer Than Three Children in the Home.** If there are fewer than three (3) children in the home who are eligible for ICCP and require child care, in-home care will be approved by the Department only when one (1) of the following special circumstances are met: (4-2-08)

**a.** Parents' qualifying activity occurs during times when out-of-home care is not available. If child care is needed during any period when out-of-home care is not available, in-home care will be approved for the entire time care is needed. A family is not expected to change between out-of-home and in-home care. (4-2-08)

**b.** The family lives in an area where out-of-home care is not available. (4-2-08)

**c.** A child has a verified illness or disability that would place the child or other children in an out-of-home facility at risk. (4-2-08)

**401. -- 499. (RESERVED).**

***PAYMENT INFORMATION***  
***(Sections 500 through 599)***

**500. ALLOWABLE CHILD CARE COSTS.**

Care provided to an eligible child by an eligible child care provider is payable subject to the following conditions: (4-2-08)

**01. Payment for Employment, Training, Education, or Preventive Service Hours.** Child care must be reasonably related to the hours of the parent's qualifying activities. ~~Travel time is included in determining qualifying activities.~~ (4-2-08)( )

**02. Family Member or Guardian Not Payable.** A parent, step-parent, or unmarried parent will not be paid for providing child care to his child. A guardian will not be paid for providing child care to his ward. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment.. (4-2-08)

**03. One-Time Registration Fees.** One-time fees for registering a child in a child care facility are payable above the local market rate, if the fee is charged to all who enroll in the facility. Fees may not exceed usual and customary rates charged to all families. Registration fees are separate from local market rates. (4-2-08)

**04. Local Market Rates (LMR) for Child Care.** The local market rates are the

maximum monthly amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted biannually. However, due to budgetary considerations, the Department may opt not to update the rate structure following a survey. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**502. SLIDING FEE SCHEDULES.**

Eligible families, except TAFI families participating in non-employment TAFI activities, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and may not waive or defer these costs. (7-1-09)

**01. Poverty Rates.** Poverty rates will be one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines published in the Federal Register. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-2-08)

**02. Calculating Family Payment.** ~~Families must pay the provider their share of costs for child care services which include the families' co-payments and any charges not paid by the Department.~~ Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment listed in the following table: (4-2-08)( )

**03. ICCP Sliding Fee Schedule.**

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
	7%	\$499	\$599	\$699	\$799	\$899	\$1,099	\$1,199	\$1,399
11%	\$799	\$1,099	\$1,299	\$1,499	\$1,699	\$1,999	\$2,199	\$2,399	\$2,599
16%	\$949	\$1,249	\$1,449	\$1,699	\$1,999	\$2,299	\$2,549	\$2,799	\$3,049
21%	\$1,099	\$1,399	\$1,599	\$1,899	\$2,299	\$2,599	\$2,899	\$3,199	\$3,499
26%	\$1,165	\$1,465	\$1,731	\$2,031	\$2,399	\$2,731	\$3,031	\$3,365	\$3,665
31%	\$1,231	\$1,531	\$1,863	\$2,163	\$2,499	\$2,863	\$3,163	\$3,531	\$3,831
36%	\$1,299	\$1,599	\$1,999	\$2,299	\$2,599	\$2,999	\$3,299	\$3,699	\$3,999

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
41%	\$1,308	\$1,616	\$2,008	\$2,316	\$2,625	\$3,016	\$3,325	\$3,716	\$4,025
46%	\$1,317	\$1,633	\$2,017	\$2,333	\$2,651	\$3,033	\$3,351	\$3,733	\$4,051
51%	\$1,326	\$1,650	\$2,026	\$2,350	\$2,677	\$3,050	\$3,377	\$3,750	\$4,077
56%	\$1,335	\$1,667	\$2,035	\$2,367	\$2,703	\$3,067	\$3,403	\$3,767	\$4,103
61%	\$1,344	\$1,684	\$2,044	\$2,384	\$2,729	\$3,084	\$3,429	\$3,784	\$4,129
66%	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456	\$3,806	\$4,156
71%	\$1,386	\$1,743	\$2,100	\$2,457	\$2,814	\$3,171	\$3,528	\$3,885	\$4,242
76%	\$1,416	\$1,780	\$2,144	\$2,508	\$2,872	\$3,236	\$3,600	\$3,964	\$4,328
81%	\$1,446	\$1,817	\$2,188	\$2,559	\$2,930	\$3,301	\$3,672	\$4,043	\$4,414
86%	\$1,476	\$1,854	\$2,232	\$2,610	\$2,988	\$3,366	\$3,744	\$4,122	\$4,500
91%	\$1,506	\$1,891	\$2,276	\$2,661	\$3,046	\$3,431	\$3,816	\$4,201	\$4,586
96%	\$1,540	\$1,932	\$2,323	\$2,715	\$3,106	\$3,498	\$3,889	\$4,281	\$4,672

(4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. CHANGE REPORTING REQUIREMENTS.**

A family who applies for or receives child care benefits must report the following permanent changes within ten (10) days of the date the change occurs. ( )

**01. Change in Activity Hours.** ( )

**02. Change in Rate of Pay.** ( )

**03. Change in Your Permanent Address.** ( )

**04. Change in Number of Household Members.** ( )

**05. Change in Unearned Income.** ( )

**06. Change in Child Care Provider.** ( )

**6001. ~~RESPONSIBILITY TO~~ REQUIRED ACTION ON REPORTED CHANGES.**

*Providers and those eligible for child care assistance are responsible for reporting changes which*

~~may affect child care benefits.~~ The Department will take the actions listed below on changes that are reported within the time frame listed in Section 600 of these rules. ~~(7-1-09)~~( )

**01. Change in Income or Hours of Activity.** ( )

**a.** If a change in income or hours of qualifying activity results in a decrease in the amount of the child care benefit, the Department will make the change effective the month following the month the change is reported. (4-2-08)

**b.** If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the change was reported. ( )

**02. Change in Billed Amount.** If the billed amount of child care ~~results in a decrease in the amount of the child care benefit~~ changes, the Department will make the changes effective in for the month the changes ~~were~~ is reported. ~~(4-2-08)~~( )

~~**03. Change Resulting in an Increase.** If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the changes were reported.~~ ~~(4-2-08)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**701. RECOUPMENT OF OVERPAYMENTS.**

**01. Recoupment of Overpayments.** The Department may recoup or recover the amount paid for child care services from a provider. Interest will accrue on these overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. Recoupment of an overpayment based on Department error may be collected from parents or providers when the overpayment is one hundred dollars (\$100), or more. Interest will not accrue on overpayments made due to Department error. An overpayment due to family or provider error, IPV or fraud must be recovered in full. (7-1-09)

**02. Parental Repayment Requirement.** A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section ~~201~~ 600 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department. ~~(4-2-08)~~( )

# **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

## **16.07.37 - CHILDREN'S MENTAL HEALTH SERVICES**

**DOCKET NO. 16-0737-1001**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code; and H0715 (2010) - DHW Children's Mental Health budget holdbacks for SFY 2010 and appropriations for SFY 2011.

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

**These rule changes allow the Department to limit and prioritize Children's Mental Health Services, including eligibility. This is necessary due to the reductions in appropriations. These changes give the Department the ability to focus the available resources on those who have the greatest clinical and financial needs.**

**In addition, these rule changes align the Children's Mental Health Services rules with the corresponding rules in IDAPA 16.07.33, "Adult Mental Health Services."**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [June, 2 2010, Idaho Administrative Bulletin, Vol. 10-6, pages 45 through 47.](#)**

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

**The fiscal impact of the holdback on funds for SFY 2010 and the appropriations for SFY 2011 (both in H0715) reduces the appropriation for SFY 2010 by \$566,000 and by an additional \$190,500 for SFY 2011, for a total reduction of \$756,500. The rule changes will align the rules with the intent language found in H0715 (2010).**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Chuck Halligan at (208) 334-6559.

DATED this 1st day of October, 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](mailto:dhwrules@dhw.idaho.gov)

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

**EFFECTIVE DATE:** The effective date of the temporary rule is **May 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 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code; and H0715 (2010) - DHW Children's Mental Health budget holdbacks for SFY 2010 and appropriations for SFY 2011.

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

<b>Thursday, June 17, 2010</b> <b>5:00 p.m. PDT</b>	<b>Tuesday, June 29, 2010</b> <b>5:00 p.m. MDT</b>	<b>Wednesday, June 30, 2010</b> <b>5:00 p.m. MDT</b>
<b>Dept. of Health &amp; Welfare-Reg. 2</b> <b>State Office Building</b> <b>1118 F Street</b> <b>3rd Floor Conf. Rm.</b> <b>Lewiston, ID</b>	<b>Dept. of Health &amp; Welfare-Reg.7</b> <b>State Office Building</b> <b>150 Shoup Ave</b> <b>2nd Floor Conf. Rm.</b> <b>Idaho Falls, ID</b>	<b>Dept. Health &amp; Welfare-Reg. 4</b> <b>J.R. Williams Building</b> <b>700 West State Street</b> <b>East Conf. Rm.</b> <b>Boise, ID</b>

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

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

**The proposed rule changes will allow the Department to limit and prioritize Children's Mental Health Services, including eligibility. This is necessary due to the reductions in appropriations. These changes will give the Department the ability to focus the available resources on those who have the greatest clinical and financial needs.**

**In addition, these rule changes will more closely align the Children's Mental Health Services rules with the corresponding rules in IDAPA 16.07.33, "Adult Mental Health Services."**

**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 in order to protect public health, safety, or welfare, and to comply with deadlines in amendments to governing law or federal programs (in this case, H0715 (2010)).

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

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

The fiscal impact of the holdback on funds for SFY 2010 and the appropriations for SFY 2011 (both in H0715) reduces the appropriation for SFY 2010 by \$566,000 and by an additional \$190,500 for SFY 2011, for a total reduction of \$756,500. The rule changes will align the rules with the intent language found in H0715.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to meet budget appropriations approved by the legislature under H0715 (2010).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Chuck Halligan at (208) 334-6559.

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 June 30, 2010.

DATED this 28th day of April, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0737-1001***

**407. ELIGIBILITY DETERMINATION.**

**01. The Department Determines Eligibility for Mental Health Services.** The total number of children who are eligible for mental health services through the Department will be established by the Department. The Department may, in its sole discretion, limit or prioritize mental health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. ( )

**02. Eligibility Requirements.** To be eligible for children's mental health services through a voluntary application to the Department, the applicant must: (5-8-09)

- a. Be under eighteen (18) years of age; (5-8-09)
- b. Reside within the state of Idaho; (5-8-09)
- c. Have a DSM-IV-TR Axis I diagnosis. A substance use disorder alone, or developmental disorder alone, does not constitute an eligible Axis I diagnosis, although one (1) or more of these conditions may co-exist with an eligible Axis I diagnosis; and (5-8-09)
- d. Have a substantial functional impairment as assessed by using the Child and Adolescent Functional Assessment Scale (CAFAS) or the Preschool and Early Childhood Functional Assessment Scale (PECFAS). Substantial functional impairment requires a full eight (8) (CAFAS) or seven (7) (PECFAS) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: ~~(5-8-09)~~(    )
  - i. Self-harmful behavior; (5-8-09)
  - ii. Moods/emotions; or (5-8-09)
  - iii. Thinking. (5-8-09)

**023. Court-Ordered Assessment, Treatment, and Services.** The court may order the Department to provide assessment, treatment, and services under the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code and the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code. Subject to court approval, the Department will make efforts to include parents and guardians in the assessment, treatment, and service planning process. (5-8-09)

**034. Ineligible Conditions.** A child who does not meet the requirements under Subsections 407.0~~12~~ or 407.0~~23~~ of this rule is not eligible for children's mental health services, other than crisis response. A child with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services" or IDAPA 16.04.11, "Developmental Disabilities Agencies," for substance use or developmental disability services. ~~(5-8-09)~~(    )



## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.07.50 - RULES AND MINIMUM STANDARDS GOVERNING NONHOSPITAL, MEDICALLY-MONITORED DETOXIFICATION/MENTAL HEALTH DIVERSION UNITS**

**DOCKET NO. 16-0750-1001**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-305, 39-311, and 56-1003, Idaho Code.

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

**This pending rule is being adopted as proposed. The proposed rules updated testing requirements for blood alcohol and tuberculosis and published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, pages 287 through 289.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Ross Edmunds at (208) 334-5726.

DATED this 12th day of November, 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](mailto:dhwrules@dhw.idaho.gov) e-mail

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

**EFFECTIVE DATE:** The effective date for these temporary rules is **October 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 39-305, 39-311, and 56-1003, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units rules are being updated to allow for a breath alcohol test to be performed on individuals being brought in for treatment in addition to the blood draw alcohol test. Also, the Tuberculin skin testing requirements for clients is being amended, as many clients may not stay in the unit long enough to have the skin test read.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of these rules are necessary for protection of public health and safety.

**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: None.

**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 rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders of non-hospital, medically-monitored, detoxification and mental health diversion units.

**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 Kathleen Allyn at (208) 334-0997.

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 October 27, 2010.

DATED this 19th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0750-1001***

**246. CONTROL OF TUBERCULOSIS.**

In order to assure the control of tuberculosis in the facility, there must be a planned, organized program of prevention through written and implemented procedures that are consistent with current accepted practices and include the following in Subsections 246.01 through 246.03~~5~~ of this rule. (3-29-10)(    )

**01. Tuberculin Skin Tests.** The results of a tuberculin skin test, taken immediately prior to admission or within six (6) months prior to admission, must be established for each client. If the status is not known upon admission, a tuberculin skin test must be done as soon as possible. (3-29-10)

**a.** If the tuberculin skin test is negative, the test does not have to be repeated prior to discharge. (3-29-10)

**b.** If the tuberculin skin test is positive, the client must have a chest x-ray to rule out the presence of infectious pulmonary tuberculosis. (3-29-10)

**02. Protective Infection Control Techniques.** If any x-ray is suggestive of infectious pulmonary tuberculosis, the facility is required to implement protective infection control techniques in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-29-10)

**03. Transfer of Client Suspected or Diagnosed.** Arrangements for transfer to an appropriate facility must be made for any client suspected or diagnosed with infectious pulmonary tuberculosis. These arrangements must be made in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-29-10)

**04. Discharge Prior to Availability of Test Result.** A client, discharged prior to sufficient time elapsing for the tuberculin skin test to be read, will be instructed regarding the appropriate time frame and protocol for return to the facility to have the tuberculin skin test read. ( )

**05. Sobering Station Exclusion.** The tuberculin skin tests required in Subsection 246.01 of this rule, is not required for clients receiving services from a sobering station. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**320. REQUIRED MINIMUM ADMISSION CRITERIA TO DETOXIFICATION UNITS.**

According to physician-approved written admission criteria, policies, and procedures, each detoxification unit must develop and implement written admission criteria that are uniformly applied to all clients. (3-29-10)

**01. Admission to Detoxification Unit.** A prospective client will be admitted or retained only if he meets the following admission criteria: (3-29-10)

- a. Must be eighteen (18) years of age or older; (3-29-10)
- b. Demonstrates a need for detoxification services; (3-29-10)
- c. Has alcohol or other addictive controlled substance intake of sufficient amount and duration to create a reasonable expectation of withdrawal upon cessation of use; (3-29-10)

d. Is medically stable prior to admission and if seeking detoxification from alcohol has a blood alcohol level no greater than ~~200mg/100cc~~ point twenty-four (.24) as measured by an accurately calibrated Breathalyzer or as determined by another equivalent laboratory test. A client who has a blood alcohol content in excess of point twenty-four (.24) may be admitted with approval granted by the medical director or his designee; (~~3-29-10~~)( )

e. Meets admission criteria specifications that do not exceed ASAM Level III.7-D; and (3-29-10)

f. Demonstrates the capacity to benefit from short-term stabilization and the services available at the facility may reduce the prospective client's acute symptoms and may prevent the client from detoxification hospitalization. (3-29-10)

**02. Detoxification Unit Able to Provide Services.** The detoxification unit must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. The client cannot require a type of service for which the detoxification unit is not approved to provide. (3-29-10)

**03. Monitoring Clients in Detoxification Unit.** The level of monitoring in the

detoxification unit of the client or the physical restrictions of the environment must be adequate to prevent the client from causing serious harm to self or others. (3-29-10)

**04. Notification of Admission of Opiate/Methadone Client.** The lead nurse must be notified that an opiate/methadone client was admitted to the detoxification unit. The name of the clinic where the client received the methadone must be documented in the client's record. (3-29-10)

**IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY**

**19.01.01 - RULES OF THE STATE BOARD OF DENTISTRY**

**DOCKET NO. 19-0101-1001**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is accepted, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912, Idaho Code.

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

**The pending rules provide for updates to documents which are incorporated by reference into the rules of the Board relative to the use of sedation and general anesthesia by dentists, and codes of ethics of the practice of dentistry and dental hygiene. New documents incorporated by reference include standards for clinical dental hygiene practice and standards for dental patient records.**

**The text of the pending rule (19.01.01.060.03.a) has been amended to add reference to an incorporated document in Section 19.01.01.004.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 337 through 351.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Susan Miller, 208-577-2638.

DATED this 5th day of November, 2010.

Susan D. Miller  
Executive Director  
Idaho State Board of Dentistry  
350 North 9<sup>th</sup> Street, Suite M-100, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0021  
Phone: 208-577-2638  
Fax: 208-334-3247

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-912.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

**Thursday, October 21, 2010 at 10:00 a.m.**

**Office of the Idaho Board of Dentistry**  
**350 North 9<sup>th</sup> Street, Suite M-100**  
**Boise, ID**

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:

**Rule 004:** The proposed rule change provides for Rule 004 updates and changes to conform to new editions of documents which are incorporated by reference into the rules of the Board. Certain reference documents have been updated by their writers to reflect new nomenclature and procedures in the fields of administration of anesthesia, as well as including new standards for practice of dentistry and dental hygiene.

**Rule 012:** The proposed rule change provides for change in nomenclature in anesthesia permits.

**Rule 030:** The proposed rule change provides for change in nomenclature for administration of nitrous oxide/oxygen.

**Rule 031:** The proposed rule change provides for a change in the nomenclature for the

administration of anesthesia, etc.

**Rule 035:** The proposed rule change provides for a change in nomenclature for administration of nitrous oxide/oxygen.

**Rule 054:** The proposed rule change provides for changes to reflect new nomenclature and procedures involved in the methods of anxiety and pain control, sedation terms, and routes of administration.

**Rule 055:** The proposed rule change provides for changes to reflect new nomenclature and procedures for minimal sedation.

**Rule 057:** The proposed rule change provides for changes to reflect new nomenclature and procedures for the administration of Nitrous oxide/oxygen.

**Rule 060:** The proposed rule change provides for changes in the nomenclature and the procedures in the administration of moderate sedation

**Rule 061:** The proposed rules changes provide for changes in the nomenclature and the procedures of the administration of general anesthesia and deep sedation.

**Rule 063:** The proposed rule changes provide for changes in nomenclature regarding incident reporting.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the relatively simple nature of the rule change.

**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:

**Certain reference documents have been updated by their writers to reflect new nomenclature and procedures in the fields of administration of anesthesia, as well as including new standards for practice of dentistry and dental hygiene.**

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Arthur R. Sacks, 208-334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27,



2010.

DATED this 26th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-1001**

**004. INCORPORATION BY REFERENCE (RULE 4).**

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

**01. Documents.** (7-1-93)

**a.** American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, ~~6~~<sup>7</sup>th Edition, 200~~6~~<sup>6</sup>. (3-15-02)( )

**b.** American Dental Association, ~~Council on Dental Education~~, Guidelines for Teaching ~~the Comprehensive Control of Pain and Anxiety in Dentistry~~ Pain Control and Sedation to Dentists and Dental Students, October 2003~~7~~. (4-11-06)( )

**c.** American Dental Association, ~~Council on Dental Education~~, Guidelines for the Use of ~~Conscious Sedation, Deep~~ Sedation and General Anesthesia ~~for~~ by Dentists, October 2003~~7~~. (4-11-06)( )

**d.** American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. ( )

**e.** Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

**f.** American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2003~~9~~<sup>9</sup> ~~(as amended)~~. (3-20-04)( )

**g.** American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), ~~1995~~ June 2009. (4-6-05)( )

**h.** American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. ( )

**i.** American Association of Dental Boards, the Dental Patient Record, June 12, 2009. ( )

**02. Availability.** These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720, or the Idaho State Law Library, Supreme Court Building, 451 W. State Street, Boise, Idaho 83720. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

**012. LICENSE AND APPLICATION FEES (RULE 12).**

The license fees and application fees shall be as follows: (3-30-07)

**01. Application Fees for Dentists:** (7-1-91)

**a. General:** (3-18-99)

i. By examination -- three hundred dollars (\$300). (3-26-08)

ii. By credentials -- six hundred dollars (\$600). (3-18-99)

**b. Specialty:** (7-1-91)

i. By examination -- three hundred dollars (\$300). (3-26-08)

ii. By credentials -- six hundred dollars (\$600). (3-18-99)

**02. Application Fees for Dental Hygienists:** (7-1-91)

**a.** By examination -- one hundred fifty dollars (\$150). (3-26-08)

**b.** By credentials -- one hundred fifty dollars (\$150). (3-26-08)

**03. Biennial License Fees for Dentists:** (3-30-07)

**a.** Active -- three hundred seventy-five dollars (\$375). (3-26-08)

**b.** Inactive -- one hundred sixty dollars (\$160). (3-26-08)

**c.** Specialty -- three hundred seventy-five dollars (\$375). (3-26-08)

**04. Biennial License Fees for Hygienists:** (3-30-07)

**a.** Active -- one hundred seventy-five dollars (\$175). (3-26-08)

**b.** Inactive -- eighty-five dollars (\$85). (3-26-08)

**05. Application Fees for General Anesthesia and ~~Conscious~~ Moderate Sedation**  
Permits: (4-2-03)( )

**a.** Initial Application -- three hundred dollars (\$300). (4-2-03)

- b.** Renewal Application -- three hundred dollars (\$300). (4-2-03)
- c.** Reinstatement Application -- three hundred dollars (\$300). (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. DENTAL HYGIENISTS - PRACTICE (RULE 30).**

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, dental hygienists are hereby authorized to perform the activities specified below: (4-6-05)

**01. General Supervision.** A dental hygienist may perform specified duties under general supervision as follows: (4-6-05)

- a.** Oral prophylaxis (including removal of supragingival and subgingival calculus, stains and plaque biofilm from teeth); (4-11-06)
- b.** Medical history assessments and intra-oral and extra-oral assessments (including charting of the oral cavity and surrounding structures, taking case histories and periodontal assessment); (4-11-06)
- c.** Developing patient care plans for prophylaxis, non-surgical periodontal therapy and supportive and evaluative care in accordance with the treatment parameters set by supervising dentist; (4-11-06)
- d.** Root planing; (4-11-06)
- e.** Non-surgical periodontal therapy; (4-11-06)
- f.** Closed subgingival curettage; (4-11-06)
- g.** Administration of local anesthesia; (4-6-05)
- h.** Removal of marginal overhangs (use of high speed handpieces or surgical instruments is prohibited); (4-6-05)
- i.** Application of topical antibiotics or antimicrobials (used in non-surgical periodontal therapy); (4-6-05)
- j.** Instructing patients in techniques of oral hygiene and preventive procedures; (4-6-05)
- k.** Placement of antibiotic treated materials pursuant to written order and site specific; (4-6-05)
- l.** All duties which may be performed by a dental assistant; and (4-11-06)

m. Such other duties as approved by the Board. (4-11-06)

**02. Indirect Supervision.** A dental hygienist may perform specified duties under indirect supervision as follows: (4-6-05)

a. Administration and monitoring of nitrous oxide/oxygen; ~~(4-6-05)~~( )

b. All dental hygienist duties specified under general supervision; and (4-6-05)

c. Such other duties as approved by the Board. (4-11-06)

**03. Direct Supervision.** A dental hygienist may perform specified duties under direct supervision as follows: (4-6-05)

a. Use of a laser restricted to gingival curettage and bleaching; (4-6-05)

b. All dental hygienist duties specified under general and indirect supervision; and (4-6-05)

c. Such other duties as approved by the Board. (4-11-06)

**031. DENTAL HYGIENISTS - PROHIBITED PRACTICE (RULE 31).**

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, a dental hygienist may not perform certain specified duties. (4-6-05)

**01. Prohibited Duties.** A dental hygienist is prohibited from performing the duties specified below: (4-6-05)

a. Definitive diagnosis and dental treatment planning; (4-6-05)

b. The operative preparation of teeth for the placement of restorative materials; (4-6-05)

c. The placement or carving of restorative materials; (4-6-05)

d. Administration of any general anesthesia, ~~or conscious~~ minimal sedation, or moderate sedation; ~~(4-6-05)~~( )

e. Final placement of any fixed or removable appliances; (4-6-05)

f. Final removal of any fixed appliance; (4-6-05)

g. Cutting procedures utilized in the preparation of the coronal or root portion of the tooth; (4-6-05)

h. Cutting procedures involving the supportive structures of the tooth; (4-6-05)

i. Placement of the final root canal filling; (4-6-05)

- j.** Final impressions of any tissue-bearing area, whether hard or soft tissue; (4-6-05)
- k.** Occlusal equilibration procedures for any prosthetic restoration, whether fixed or removable; (4-6-05)
- l.** Final placement of prefabricated or cast restorations or crowns; and (4-6-05)
- m.** Such other duties as specifically prohibited by the Board. (4-6-05)

**032. -- 034. (RESERVED).**

**035. DENTAL ASSISTANTS - PRACTICE (RULE 35).**

**01. Direct Supervision.** A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)

- a.** Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)
- b.** Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)
- c.** Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)
- d.** Expose and process radiographs; (4-6-05)
- e.** Take impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (4-6-05)
- f.** Record diagnostic bite registration; (4-6-05)
- g.** Record bite registration for fabrication of restorations; (4-6-05)
- h.** Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)
- i.** Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)
- j.** Placement and removal of arch wire; (4-6-05)
- k.** Placement and removal of orthodontic separators; (4-6-05)
- l.** Placement and removal of ligature ties; (4-6-05)

- m.** Cutting arch wires; (4-6-05)
- n.** Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)
- o.** Adjust arch wires; (4-6-05)
- p.** Etching of teeth prior to placement of restorative materials; (4-6-05)
- q.** Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)
- r.** Placement and removal of rubber dam; (4-6-05)
- s.** Placement and removal of matrices; (4-6-05)
- t.** Placement and removal of periodontal pack; (4-6-05)
- u.** Removal of sutures; (4-6-05)
- v.** Application of cavity liners and bases; (4-6-05)
- w.** Placement and removal of gingival retraction cord; (4-6-05)
- x.** Application of topical fluoride agents; and (4-6-05)
- y.** Performing such other duties as approved by the Board. (4-6-05)

**02. Prohibited Duties.** Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)

- a.** Definitive diagnosis and treatment planning. (4-6-05)
- b.** The placement or carving of permanent restorative materials in any manner. (7-1-93)
- c.** Any procedure using lasers. (4-6-05)
- d.** The administration of any general anesthetic, infiltration anesthetic or any injectable nerve block procedure. (4-6-05)
- e.** Any oral prophylaxis. Oral prophylaxis is defined as the removal of plaque, calculus, and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing. (7-1-93)
- f.** Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued

by an approved teaching entity. (4-6-05)

**g.** The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)

i. Fabrication and placement of temporary crowns; (4-6-05)

ii. Perform the mechanical polishing of restorations; (7-1-93)

iii. Initiating, regulating and monitoring the administration of nitrous oxide/~~oxygen~~  
*analgesia* to a patient; ~~(4-11-06)~~( )

iv. Application of pit and fissure sealants; (7-1-93)

v. Coronal polishing, unless authorized by a Certificate of Registration; this refers to the technique of removing soft substances from the teeth with pumice or other such abrasive substances with a rubber cup or brush. This in no way authorizes the mechanical removal of calculus nor is it to be considered a complete oral prophylaxis. This technique (coronal polishing) would be applicable only after examination by a dentist and removal of calculus by a dentist or dental hygienist. (7-1-93)

vi. Use of a high-speed handpiece restricted to the removal of orthodontic cement or resin. (4-6-05)

**03. Expanded Functions Qualifications.** A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.g. upon satisfactory completion of the following requirements: (4-6-05)

**a.** Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (4-6-05)

i. Current certification by the Dental Assisting National Board; or (7-1-93)

ii. Successful completion of a Board-approved course in the fundamentals of dental assisting; or (3-18-99)

iii. Successfully challenging the fundamentals course. (7-1-93)

**b.** Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

**04. Course Approval.** Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its courses of instruction in expanded

functions. Before approving such course, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials.

(3-18-99)

**05. Other Credentials.** Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved courses, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s).

(3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**054. DEFINITIONS (RULE 54).**

For the purposes of these anesthesia rules, the following terms will be used, as defined below:

(4-11-06)

**01. Methods of Anxiety and Pain Control.**

(4-11-06)

**a.** Anxiolysis Analgesia shall mean ~~the process of~~ the diminution or elimination of ~~the patient's anxiety, apprehension or fear by the administration of a pharmacological agent that renders the patient relaxed but does not impair the patient's ability to maintain normal mental abilities and vital functions. An oral sedative agent can be administered in the treatment setting or prescribed for patient dosage prior to the appointment~~ pain. (4-11-06)( )

**b.** Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. ( )

**bc.** Conscious Minimal sedation shall mean a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond ~~appropriately normally~~ to physical tactile stimulation ~~or and~~ verbal command, ~~and that is produced through the enteral or parenteral administration of a pharmacological or non-pharmacological method or a combination thereof.~~ Although cognitive function and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough never to render unintended loss of consciousness ~~unlikely~~. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious minimal sedation. ~~Oral sedative agents can be administered in the treatment setting or prescribed for patient dosage prior to the appointment.~~ (4-11-06)( )

**d.** Moderate sedation shall mean a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. ( )



~~ee.~~ Deep sedation shall mean an drug-induced state of depressed depression of consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to physical stimulation or verbal command, and that is produced by a pharmacological or non-pharmacological method or a combination thereof during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (4-11-06)( )

~~ef.~~ General anesthesia shall mean an drug-induced state loss of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and that is produced by a pharmacological or non-pharmacological method or a combination thereof during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. (4-11-06)( )

~~e.~~ Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. (4-11-06)

~~f.~~ Nitrous oxide inhalation analgesia shall mean an induced controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command. (4-11-06)

## 02. Sedation Terms. (4-11-06)

a. Advanced Cardiac Life Support (ACLS) shall mean an advanced cardiac life support course offered by a recognized accrediting organization. (4-11-06)

b. Monitor or monitoring shall mean the direct clinical observation of a patient during the administration of anesthesia by a person trained to observe the physical condition of the patient and capable of assisting with emergency or other procedures. (4-11-06)

c. Operator shall mean the supervising dentist or another person who is authorized by these rules or holds a permit to induce and administer the proper level of anesthesia/sedation. (4-11-06)

d. Titration shall mean the administration of small incremental doses of a drug until a desired clinical effect is observed reached. Knowledge of each drug's time of onset, peak response and duration of action is essential to avoid over sedation. Although the concept of titration of a drug to effect is critical for patient safety, when the intent is moderate sedation one must know whether the previous dose has taken full effect before administering an additional drug

increment. (4-11-06)( )

e. Maximum recommended (MRD) shall mean maximum FDA-recommended dose of a drug, as printed in FDA-approved labeling for unmonitored home use. ( )

f. Incremental dosing shall mean administration of multiple doses of a drug until a desired effect is reached, but not to exceed the maximum recommended dose (MRD). ( )

g. Supplemental dosing during minimal sedation shall mean a single additional dose of the initial drug that may be necessary for prolonged procedures. The supplemental dose should not exceed one-half of the initial dose and should not be administered until the dentist has determined the clinical half-life of the initial dosing has passed. The total aggregate dose must not exceed one and one-half times (1.5x) MRD on the day of treatment. ( )

**03. Routes of Administration.** (4-11-06)

**a.** Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual). (4-11-06)

**b.** Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the pulmonary tree lungs and whose primary effect is due to absorption through the pulmonary bed gas/blood interface. (4-11-06)( )

**c.** Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract ~~(i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC),~~ intraocular intraosseous (IO)]. (4-11-06)( )

**d.** Transdermal/transmucosal. A technique of administration in which the drug is administered by patch or iontophoresis through skin. (4-11-06)( )

**e.** Transmucosal. A technique of administration in which the drug is administered across mucosa such as intranasal, sublingual, or rectal. ( )

**055. ANXIOLYSIS MINIMAL SEDATION (RULE 55).**

Persons licensed to practice dentistry in accordance with the Idaho Dental Practice Act and these rules ~~may are not required to obtain a permit to administer medication to patients for the purpose of relieving anxiety so long as the medication is given in a dosage that is within the current guidelines set forth for anxiolytic dosage on the manufacturer's package insert or other recognized drug reference and does not induce a state of depressed consciousness to the level of general anesthesia, deep sedation, or conscious sedation in the patient~~ minimal sedation to adult patients. When the intent is minimal sedation for adults, the appropriate initial dosing of a single enteral drug is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. (4-11-06)( )

**01. Patient Safety.** The administration of ~~anxiolytics by means of titration or in combination with nitrous oxide inhalation analgesia~~ minimal sedation is permissible so long as it does not produce an alteration of the state of consciousness in a patient to the level of ~~conscious moderate~~ moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain

the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of ~~conscious~~ moderate sedation, deep sedation or general anesthesia. Nitrous oxide/oxygen inhalation analgesia shall not may be used in combination with ~~anxiolytic medication except during the limited period of time required to administer a local anesthetic~~ a single enteral drug in minimal sedation. Notwithstanding any other provision in these rules, a dentist shall initiate and regulate the administration of nitrous oxide/oxygen inhalation analgesia when used in combination with ~~anxiolysis~~ minimal sedation. (4-11-06)( )

**02. Personnel.** ~~A patient sedated for anxiolytic purposes in the dental office shall be monitored by an assistant trained in basic life support to observe appropriate physiologic parameters and assist in any support or resuscitation measures required.~~ At least one (1) additional person currently certified in Basic Life Support for Healthcare Providers must be present in addition to the dentist. (4-11-06)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**057. NITROUS OXIDE/OXYGEN INHALATION ANALGESIA (RULE 57).**

Persons licensed to practice dentistry and dental hygiene and dental assistants certified in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer nitrous oxide/oxygen inhalation analgesia to patients. Nitrous oxide/oxygen inhalation analgesia when used in combination with other sedative agents may produce an alteration of the state of consciousness in a patient to the level of ~~conscious~~ moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of ~~conscious~~ moderate sedation, deep sedation or general anesthesia. (4-11-06)( )

**01. Patient Safety.** In connection with the administration of nitrous oxide/oxygen inhalation analgesia, a dentist shall: (4-11-06)( )

**a.** Evaluate the patient to insure that the patient is an appropriate candidate for nitrous/oxygen inhalation analgesia; and (4-11-06)( )

**b.** Insure that any patient under nitrous/oxygen inhalation analgesia shall be continually monitored ~~for such matters as response to verbal stimulation, oral mucosal color and vital signs~~; and (4-11-06)( )

**c.** Insure that a second person shall be on the office premises who can immediately respond to any request from the person administering the nitrous/oxygen inhalation analgesia; and. (4-11-06)( )

~~**d.** Insure that a qualified person is continuously monitoring the patient.~~ (4-11-06)

**02. Required Facilities and Equipment.** Dental offices in which nitrous oxide/oxygen sedation is administered to patients shall, at a minimum and in addition to emergency medications, maintain appropriate facilities and have equipment on site for immediate use as

follows:

(4-11-06)( )

a. A nitrous oxide delivery system with a fail-safe ~~mechanism system~~ that ~~will insure appropriate continuous oxygen delivery and a scavenger system~~ is appropriately checked and calibrated. The equipment must also have either: ( )

i. A functioning device that prohibits the delivery of less than thirty percent (30%) oxygen; or ( )

ii. An appropriately calibrated and functioning in-line oxygen analyzer with audible alarm; and (4-11-06)( )

b. An ~~operating room sufficiently large to accommodate the patient and allow for delivery of appropriate care in an emergency situation~~ appropriate scavenging system must be available; and (4-11-06)( )

~~c. Suction equipment capable of aspirating gastric contents from the mouth and pharynx;~~ (4-11-06)

~~d. A portable positive-pressure oxygen delivery system including full face masks and a bag-valve mask device capable of delivering positive pressure, oxygen-enriched ventilation to the patient; and~~ suitable for the patient being treated. (4-11-06)( )

~~e. An appropriately sized measuring device for taking a patient's blood pressure.~~ (4-11-06)

03. **Personnel.** For nitrous oxide/oxygen administration, personnel shall include: (4-11-06)( )

a. An operator; and (4-11-06)

b. An assistant ~~trained currently certified in basic life support to monitor appropriate physiologic parameters and assist in any support or resuscitation measures required (the operator and the assistant may be the same person)~~ Basic Life Support for Healthcare Providers. (4-11-06)( )

c. Auxiliary personnel must have documented training in Basic Life Support for Healthcare Providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The ~~practitioner dentist~~ and all office personnel must participate in periodic reviews of office emergency protocol. (4-11-06)( )

058. -- 059. (RESERVED).

060. ~~ADMINISTRATION OF CONSCIOUS~~ **MODERATE** SEDATION (RULE 60).

Dentists licensed in the state of Idaho cannot ~~use conscious~~ administer moderate sedation in the practice of dentistry unless they have obtained the proper ~~conscious moderate~~ sedation permit from the Idaho State Board of Dentistry. A ~~conscious moderate~~ sedation permit may be either limited enteral or comprehensive parenteral. A ~~limited conscious moderate enteral~~ sedation permit

authorizes dentists to administer ~~conscious moderate~~ sedation by either enteral or combination inhalation-enteral routes of administration. A ~~comprehensive-conscious moderate parenteral~~ sedation permit authorizes a dentist to administer ~~conscious moderate~~ sedation by ~~enteral, combination inhalation-enteral or parenteral~~ any routes of administration. A dentist shall not administer ~~conscious moderate~~ sedation to children under eighteen (18) years of age unless they have qualified for and been issued a ~~comprehensive-conscious moderate parenteral~~ sedation permit. (4-11-06)( )

**01. Requirements for a ~~Limited-Conscious Moderate Enteral~~ Sedation Permit.** To qualify for a ~~limited-conscious moderate enteral~~ sedation permit, a dentist applying for a permit ~~must shall provide proof that the dentist has~~ completed training in the ~~use and~~ administration of ~~conscious moderate~~ sedation ~~drugs~~ to a level consistent with that prescribed in ~~Part I and Part III of~~ the American Dental Association's "~~ADA~~ Guidelines for Teaching ~~the Comprehensive Control of Pain Control and Anxiety in Dentistry Sedation to Dentists and Dental Students,~~" as incorporated in Section 004 in these rules. The five (5) year requirement regarding the required training for a ~~limited-conscious moderate enteral~~ sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. To obtain a ~~limited-conscious moderate enteral~~ sedation permit, a dentist must provide certification of the following:

(4-11-06)( )

**a.** Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a ~~limited-conscious moderate enteral~~ sedation permit that included documented training of a minimum of ~~eighteen twenty-four (1824)~~ hours of ~~didactic education instruction~~ plus management of at least twenty ten (210) clinically-oriented adult case experiences ~~which provided competency in enteral and combination inhalation-enteral conscious sedation. Clinically-oriented experiences may include either supervised administration or group observations on patients undergoing enteral or combination inhalation-enteral conscious sedation by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; or and (4-11-06)( )~~

~~**b.** Completion of a Board of Dentistry approved course of instruction within five (5) years of the date of application for a limited-conscious sedation permit that included documented training of a minimum of eighteen (18) hours of didactic education plus twenty (20) clinically-oriented experiences which provided competency in enteral and combination inhalation-enteral conscious sedation. Clinically-oriented experiences may include either supervised administration or group observations on patients undergoing enteral or combination inhalation-enteral conscious sedation; and~~ (4-11-06)

**eb.** Proof of ~~completion and~~ current certification of Advanced Cardiac Life Support ~~training~~ or its equivalent. (4-11-06)( )

**02. Requirements for a ~~Comprehensive-Conscious Moderate Parenteral~~ Sedation Permit.** ~~A To qualify for a moderate parenteral sedation permit, a~~ dentist applying for a permit ~~to administer comprehensive-conscious sedation~~ shall provide proof that the dentist has ~~received~~

~~formal completed~~ training ~~and certification~~ in the ~~use~~ administration of ~~conscious moderate~~ parenteral sedation ~~drugs~~ as ~~described~~ prescribed in the American Dental Association's "Guidelines for Teaching ~~the Comprehensive Pain Control of Pain and Anxiety in Dentistry and Sedation to Dentists and Dental Students,~~" published by the American Dental Association and as incorporated by reference into Section 004 of these rules within the five (5) year period immediately prior to the date of application for a ~~comprehensive conscious moderate parenteral~~ sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The ~~formal~~ training program shall: ~~(4-11-06)( )~~

a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and (4-5-00)

b. Consist of a minimum of sixty (60) hours ~~didactic education and~~ of instruction, plus management of at least twenty (20) ~~hours~~ patients contact by the intravenous route. Patient contact includes the administration of the intravenous (IV) sedation and management by the participant from induction through emergence.; and ~~(3-18-99)( )~~

c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received. (3-18-99)

d. In addition, the dentist must ~~show proof of~~ maintain current certification ~~of in~~ Advanced Cardiac Life Support ~~training~~ or its equivalent. ~~(3-15-02)( )~~

**03. General Requirements for ~~Limited~~ Moderate Enteral and Comprehensive Conscious Moderate Parenteral Sedation Permits.** ~~(4-11-06)( )~~

a. **Facility Requirements.** The dentist must have a properly equipped facility for the administration of ~~conscious moderate~~ sedation ~~staffed with a dentist supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto.~~ The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Adequacy of the facility and competence of the anesthesia team will be determined by e Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004.01.c. and Section 004.01.d. of these rules as set forth by the American Dental Association. ~~(3-18-99)( )~~

b. **Personnel.** For ~~conscious moderate~~ sedation, the minimum number of personnel shall be two (2) including: ~~(10-1-87)( )~~

i. The operator; and (10-1-87)

ii. An assistant ~~trained to monitor appropriate physiologic parameters and assist in any support or resuscitation measures required~~ currently certified in Basic Life Support for Healthcare Providers. ~~(10-1-87)( )~~

iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The practitioner and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. ~~(3-18-99)~~( )

c. **Permit Renewal.** Renewal of the permit will be required every five (5) years ~~in conjunction with the routine dental licensure renewal~~. Proof of a minimum of twenty-five (25) credit hours continuing education in conscious moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. ~~(4-2-03)~~( )

d. **Reinstatement.** A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in conscious moderate sedation techniques for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs. ~~(4-2-03)~~( )

#### 061. GENERAL ANESTHESIA AND DEEP SEDATION (RULE 61).

Dentists licensed in the state of Idaho cannot use general anesthesia or deep sedation techniques in the practice of dentistry unless they have obtained the proper permit from the Idaho State Board of Dentistry by conforming with the following conditions: ~~(10-1-87)~~( )

01. **General Requirements.** A dentist applying for a permit to administer general anesthesia ~~and~~ or deep sedation shall provide proof that the dentist: ~~(10-1-87)~~( )

a. Has completed an minimum of one (1) year of advance training in anesthesiology and related academic subjects beyond the undergraduate dental school level advanced education program accredited by the ADA Commission on Dental Accreditation that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia, commensurate with Part IV.C of the American Dental Association's "Guidelines for the Use of Sedation and General Anesthesia by Dentists" within the five (5) year period immediately prior to the date of application for a permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. ~~This training is described in Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry," as incorporated by reference in Section 004 of these rules; or~~ and ~~(4-11-06)~~( )

~~b. Is a diplomate of the American Board of Oral and Maxillofacial Surgery; or~~ ~~(10-1-87)~~

~~c. Is a member of the American Association of Oral and Maxillofacial Surgeons; or~~ ~~(10-1-87)~~

- ~~d.~~ ~~Is a Fellow of the American Dental Society of Anesthesiology; and~~ (4-5-00)
- ~~eb.~~ ~~Has e~~Current Certification ~~of in~~ Advanced Cardiac Life Support ~~Training~~ or its equivalent; and (3-15-02)( )
- ~~fc.~~ Has an established protocol or admission to a recognized hospital. (3-18-99)

**02. Facility Requirements.** The dentist must have a properly equipped facility for the administration of general anesthesia, ~~staffed with a dentist supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto~~ or deep sedation. The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of general anesthesia or deep sedation and providing the equipment, drugs and protocol for patient rescue. Adequacy of the facility and competence of the anesthesia team will be determined by e Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004 of these rules, ~~regarding approval of equipment within the facility~~ as set forth by the American Association of Oral and Maxillofacial Surgeons in their office anesthesia evaluation manual. (4-11-06)( )

**03. Personnel.** For general anesthesia ~~and or~~ deep sedation ~~techniques~~, the minimum number of personnel shall be three (3) including: (10-1-87)( )

a. A qualified ~~person~~ operator to direct the sedation as specified in Section 061 of this rule; and (4-11-06)( )

b. ~~A qualified person whose primary responsibilities are observation and monitoring of the patient and who has documented current CPR certification; and~~ Two (2) additional individuals who have current certification in Basic Life Support for the Healthcare Provider. (3-18-99)( )

c. ~~An assistant for the operator who has documented current CPR certification.~~ When the same individual administering the deep sedation or general anesthesia is performing the dental procedure, one (1) of the additional appropriately trained team members must be designated for patient monitoring. (3-18-99)( )

**04. Conscious Moderate Sedation.** A dentist holding a permit to administer general anesthesia or deep sedation under this rule may also administer ~~conscious moderate~~ conscious moderate sedation. (3-18-99)( )

**05. Permit Renewal.** Renewal of the permit will be required every five (5) years ~~in conjunction with the routine dental licensure renewal~~. Proof of a minimum of twenty-five (25) credit hours of continuing education in general anesthesia ~~and or~~ deep sedation ~~techniques~~ and proof of current certification in Advance Cardiac Life Support will be required to renew a permit. A fee shall be assessed to cover administrative costs. (4-2-03)( )

**06. Reinstatement.** A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date



of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in general anesthesia ~~and~~ or deep sedation techniques for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs.

~~(4-2-03)~~(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**063. INCIDENT REPORTING (RULE 63).**

~~Any anesthesia permit holder~~ Dentists shall report to the Board, in writing, within seven (7) days after the death or transport to a hospital or emergency center for medical treatment for a period exceeding twenty-four (24) hours of any patient to whom conscious sedation ~~or general anesthesia~~ was administered.

~~(3-18-99)~~(    )

## IDAPA 23 - IDAHO BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1001

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1404(11), Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 365 through 374.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sandra Evans, M.A.Ed., R.N., Executive Director, (208) 334-3110 Ext. 26.

DATED this 28th day of October, 2010.

Sandra Evans, M.A.Ed., R.N.  
Executive Director  
Board of Nursing  
280 N. 8th St. (8th & Bannock), Ste. 210  
P. O. Box 83720, Boise, ID 83720-0061  
Phone: (208) 334-3110, Ext. 26  
Fax: (208) 334-3262

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404(11), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

A current definition addressing who is allowed to administer medications is too restrictive and inadvertently fails to include certified medication assistants. A rule amendment is necessary to more accurately reflect license renewal procedures. Existing provisions regarding license reinstatement are not located together, have unnecessary redundancies, and contain a grammatical error. There is confusion and lack of clarity over the term “family member” for purposes of prescribing medications and a definition is required. A provision regarding nursing school administrators is misplaced and the Board will no longer be issuing wallet certificates and duplicate licenses so provisions addressing these matters need to be deleted. The proposed amendments will: (1) clarify that persons specifically authorized by Board statute or rule may administer medications; (2) reflect the fact that the Board no longer mails license renewal applications, but only sends notice of renewal to licensees; (3) add a provision to inform licensees where they can obtain license applications; (4) reorganize provisions regarding license reinstatement in a more convenient, understandable format and accessible location, and eliminate redundancies; (5) define the term “family member” in connection with the prescriptive authority of an advanced practice nurse; (6) move a provision on school administrators to a more appropriate location in rule; and (7) delete outdated references to wallet certificates and duplicate licenses.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated

rulemaking was not conducted because virtually all of the rulemaking consists of “housekeeping” matters such as reorganizing, renumbering and re-titling sections to create a more logical, coherent, procedural framework, and to correct an obvious misstatement in one provision and an obvious misplacement of another provision. The remaining rulemaking simply provides clarity to an existing definition of a term and established a necessary definition in connection with another term, neither of which should be controversial.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, M.A.Ed., R.N., Executive Director, at (208) 334-3110 Ext. 26.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 20th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-1001***

## **010. DEFINITIONS.**

**01. Abandonment.** The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to an attending physician or to a staff supervisor, prior to leaving the assignment, constitutes termination of the nurse/patient relationship. (3-30-07)

**02. Accreditation.** The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing. (7-1-93)

**03. Administration of Medications.** The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology, and pharmacology. *Licensed nurses* **Only persons authorized under Board statutes and these rules** may administer medications and treatments as prescribed by health care providers authorized to prescribe medications. (5-3-03)(    )

- 04. Approval.** The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board. (5-3-03)
- 05. Assist.** To aid or help in the accomplishment of a prescribed set of actions. (7-1-93)
- 06. Assistance With Medications.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications. (5-3-03)
- 07. Board.** The Idaho Board of Nursing. (7-1-93)
- 08. Board Staff.** The executive director and other such personnel as are needed to implement the Nursing Practice Act and these rules. (7-1-93)
- 09. Charge Nurse.** A licensed nurse who bears primary responsibility for assessing, planning, prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care. (5-3-03)
- 10. Clinical Preceptor.** A licensed professional nurse who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. (5-3-03)
- 11. Competence.** Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)
- 12. Curriculum.** The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)
- 13. Delegation.** The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)
- 14. Disability.** Any physical, mental, or emotional condition that interferes with the nurse's ability to practice nursing safely and competently. (5-3-03)
- 15. Emeritus License.** A license issued to a nurse who desires to retire from active practice for any length of time. (5-3-03)
- 16. Licensing Examination.** A licensing examination that is acceptable to the Board. (5-3-03)
- 17. License in Good Standing.** A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)
- 18. Limited License.** A nursing license subject to specific restrictions, terms, and conditions. (5-3-03)

- 19. Nursing Assessment.** The systematic collection of data related to the patient's health care needs. (5-3-03)
- 20. Nursing Diagnosis.** The clinical judgment or conclusion regarding patient/client/family/ community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)
- 21. Nursing Intervention.** An action deliberately selected and performed to support the plan of care. (5-3-03)
- 22. Nursing Service Administrator.** A licensed professional nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)
- 23. Organized Program of Study.** A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)
- 24. Patient.** An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)
- 25. Patient Education.** The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)
- 26. Plan of Care.** The goal-oriented strategy developed to assist individuals or groups to achieve optimal health potential. (5-3-03)
- 27. Practice Standards.** General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)
- 28. Probation.** A period of time set forth in an order in which certain restrictions, conditions or limitations are imposed on a licensee. (5-3-03)
- 29. Protocols.** Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)
- 30. Revocation.** Termination of the authorization to practice. (5-3-03)
- 31. Scope of Practice.** The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)
- 32. Supervision.** Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. (4-6-05)
- 33. Suspension.** An order temporarily withdrawing a nurse's right to practice nursing.

(5-3-03)

**34. Technician/Technologist.** These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants. (3-30-07)

**35. Universal Standards.** The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease, also referred to as “Standard Precautions.” (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. LICENSE RENEWAL.**

All licenses must be renewed as prescribed in the Section 54-1411, Idaho Code. (3-30-01)

**01. Renewal ~~Application~~ Notice -- Licensed Professional Nurse.** A notice of renewal application will be mailed to every currently licensed professional nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (~~3-30-01~~)( )

**02. Renewal ~~Application~~ Notice -- Licensed Practical Nurse.** A notice of renewal application will be mailed to every currently licensed practical nurse, at the address on record with the Board, on or before July 1 of every even-numbered year. (~~3-30-01~~)( )

**03. Renewal ~~Application~~ Notice -- Advanced Practice Professional Nurse.** A notice of renewal application will be mailed to every currently licensed advanced practice professional nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (~~3-30-01~~)( )

**04. Renewal ~~Application~~ Notice -- Emeritus Licensure.** A notice of renewal application will be mailed to every holder of a current emeritus license, at the address on record with the Board, on or before July 1 of the renewal year that applied to the applicant’s license at the time emeritus status was granted. If the applicant was an RN or APPN at the time emeritus status was granted, renewal will take place in odd numbered years. If the applicant was an LPN at the time emeritus status was granted, renewal will take place in even numbered years. (~~4-2-03~~)( )

**05. Renewal Applications.** Renewal applications may be obtained by contacting the Board. ( )

**056. Final Date to Renew.** The original signed completed renewal application and renewal fee as prescribed in Section 900 of these rules, must be submitted to the Board and post-marked or electronically dated not later than August 31 of the appropriate renewal year. (~~3-30-01~~)( )

**067. Date License Lapsed.** Licenses not renewed prior to September 1 of the appropriate year will be lapsed and therefore invalid. (11-28-84)

**078. Effective Period.** Renewed licenses shall be effective for a two (2) year period, from September 1 of the renewal year. (3-30-01)

**061. LICENSE REINSTATEMENT (NON-DISCIPLINE).**

**01. Within One Year.** A person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: (3-30-07)

**a.** Filing a completed renewal application; and (3-30-01)

**b.** Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.05 of these rules. (4-2-03)

**02. After One Year.** After one (1) year, but less than three (3) years, a person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: (3-30-07)

**a.** Filing a completed reinstatement application; and (3-30-01)

**b.** Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)

**c.** Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. (3-30-01)

**d.** Causing the submission of Aa current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ~~(3-30-07)~~( )

**03. After Three Years.** After three (3) years, a person whose license has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: (3-30-07)

**a.** Filing a completed reinstatement application; and (3-30-07)

**b.** Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)

**c.** Payment of the temporary license fee prescribed in Subsection 901.07 of these rules, if required; and (4-2-03)

**d.** Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (3-30-07)

**e.** Causing the submission of Aa current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ~~(3-30-07)~~( )

~~**04. After Discipline.** A person whose license has been subject to disciplinary action by the Board may apply for reinstatement of the license to active and unrestricted status by:~~

~~(3-30-07)~~



- ~~a. Submitting a completed application for reinstatement; and (4-2-03)~~
- ~~b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)~~
- ~~c. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and (3-30-07)~~
- ~~d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (3-30-07)~~
- ~~e. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (3-30-07)~~
- ~~f. A person whose license has been revoked may not apply for reinstatement until two (2) years following the order of revocation. (3-30-07)~~

**054. Reinstatement of Emeritus License to Current Status.** A person who holds a current emeritus license in good standing may apply for reinstatement of the license to active and unrestricted status by: (4-2-03)

- a. Submitting a completed application for reinstatement; and (4-2-03)
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
- c. Providing evidence, satisfactory to the Board, of the applicant's current competency to practice. (3-30-07)

*Codified Section 120 has been moved and renumbered to proposed Section 062*

**12062. REINSTATEMENT AFTER DISCIPLINE.**

~~01. **Application.** Applicants for reinstatement of revoked licenses must apply on forms provided by the Board and must pay any required fees. (3-15-02)~~

**01. Submission of Application Materials.** A person whose license has been subject to disciplinary action by the Board may apply for reinstatement of the license to active and unrestricted status by: ( )

- a. Submitting a completed application for reinstatement; and ( )**
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and ( )**
- c. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and ( )**
- d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice**

safely and competently. ( )

e. Causing the submission of a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

**02. Appearance Before Board.** Applicants for reinstatement may be required to appear before the Board. (3-15-02)

**03. Evaluation of Applications.** In considering applications for reinstatement, the Board will evaluate: (3-15-02)

**a.** The nature and severity of the act which resulted in ~~revocation of the license discipline;~~ (7-1-91)( )

**b.** The conduct of the applicant subsequent to the ~~revocation of license discipline;~~ (6-1-78)( )

**c.** The lapse of time since ~~revocation discipline;~~ (6-1-78)( )

**d.** The degree of compliance with all terms and conditions the Board may have set forth as a prerequisite for reinstatement; (3-15-02)

**e.** Any intervening circumstances that may have altered the need for compliance; (3-15-02)

**f.** The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; (11-28-84)

**g.** The applicant's adherence to or violation of any applicable law or rule regulating the practice of nursing; and (4-6-05)

**h.** The applicant's criminal background information as evidenced by a current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

**04. Board Action Possible.** After evaluation, the Board may deny a reinstatement, grant a reinstatement, or issue a license permitting the applicant to practice nursing under specified terms and conditions. (3-15-02)

**05. Assessment of Costs.** As a condition of withdrawing, reversing, modifying, or amending a ~~suspension or revocation~~ prior disciplinary order, the applicant may be required to pay all or any part of the costs incurred by the Board in the proceedings in which the order was entered. (3-15-02)( )

**06. Application for Reinstatement After Revocation.** Unless otherwise provided in the order of revocation, applicants for reinstatement of revoked licenses may not apply for reinstatement for a period of two (2) years after entry of the order. (3-15-02)

~~0623.~~ -- 075. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

102. -- ~~109~~31. (RESERVED).

*Codified Section 120 has been moved and renumbered to proposed Section 062*

~~121. -- 131. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

**316. GROUNDS FOR DISCIPLINE OF AN ADVANCED PRACTICE PROFESSIONAL NURSE LICENSE.**

In addition to the grounds set forth in Section 54-1413, Idaho Code, and Section 100 of these rules, an advanced practice professional nursing license may be suspended, revoked, placed upon probation, or other disciplinary sanctions imposed by the Board on the following grounds:

(3-30-07)

**01. Prescribing or Dispensing Controlled Substances.** Prescribing, dispensing, or selling any drug classified as a controlled substance to a family member or to himself. For purposes of Section 316 of these rules, "family member" is defined as the licensee's spouse, child (biological, adopted, or foster), parent, sibling, grandparent, grandchild, or the same relation by marriage. ~~(7-1-99)~~( )

**02. Violating Governing Law.** Violating any state or federal law relating to controlled substances. (7-1-99)

**03. Outside Scope of Practice.** Prescribing or dispensing outside the scope of the advanced practice professional nurse's practice. (7-1-99)

**04. Other Than Therapeutic Purposes.** Prescribing or dispensing for other than therapeutic purposes. (7-1-99)

**05. Violation of Nursing Practice Act or Board Rules.** Violating the provisions of the Nursing Practice Act or the rules of the Board. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

**641. FACULTY ~~RESPONSIBILITIES.~~**

**01. Numbers Needed.** There shall be sufficient faculty with educational preparation and nursing expertise to meet the objectives and purposes of the nursing education program. (4-5-00)

**a.** Number of faculty shall be sufficient to design and implement the curriculum necessary to prepare students to function in a rapidly changing healthcare environment. (4-5-00)

**b.** Number of faculty in the clinical setting shall be sufficient in number to assure patient safety and meet student learning needs. (4-5-00)

**02. Faculty-Student Ratio.** There shall be no more than ten (10) students for every faculty person in the clinical agencies. Deviations may be presented for approval with the program's annual report to the Board with written justification assuring client safety and supporting accomplishment of learner objectives. (4-5-00)

~~**03. Numbers of Administrators Needed.** There shall be at least one (1) qualified nursing administrator for each nursing education department or division. In institutions that offer nursing education programs for more than one (1) level of preparation and where the scope of administrative responsibility so requires, there shall be an individual administrator for each nursing education program. (11-28-84)~~

**642. (RESERVED).**

**643. ADMINISTRATOR RESPONSIBILITIES AND QUALIFICATIONS.**

**01. Administrator Responsibilities.** The administrator provides the leadership and is accountable for the administration, planning, implementation, and evaluation of the program. The administrator's responsibilities include, but are not limited to: (4-5-00)

**a.** Development and maintenance of an environment conducive to the teaching and learning processes; (4-5-00)

**b.** Liaison with and maintenance of the relationship with administrative and other units within the institution; (4-5-00)

**c.** Leadership within the faculty for the development and implementation of the curriculum; (4-5-00)

**d.** Preparation and administration of the program budget; (4-5-00)

**e.** Facilitation of faculty recruitment, development, performance review, promotion, and retention; (4-5-00)

**f.** Liaison with and maintenance of the relationship with the Board; and (4-5-00)

**g.** Facilitation of cooperative agreements with practice sites. (4-5-00)

**02. Administrator Qualifications.** The administrator of the program shall be a licensed professional nurse, with an unencumbered license in this state, and with the additional education and experience necessary to direct the program. (4-5-00)

**a.** Programs for Unlicensed Assistive Personnel. Meet institutional requirements. (4-5-00)

**b.** Practical Nurse Administrator. The administrator in a program preparing for practical nurse licensure shall: (4-5-00)

i. Hold a minimum of a master's degree with a major in nursing; and (4-5-00)

ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)

**c.** Professional Nurse Administrator. The administrator in a program preparing for professional nurse licensure shall: (4-5-00)

i. Hold a minimum of a master's degree with a major in nursing and meet institutional requirements; and (4-5-00)

ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)

**d.** Advanced Practice Professional Nurse Administrator. The administrator in a program preparing for advanced practice professional nursing shall: (4-5-00)

i. Hold a master's degree and an earned doctoral degree, one of which is in nursing; and (4-5-00)

ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)

**03. Numbers of Administrators Needed.** There shall be at least one (1) qualified nursing administrator for each nursing education department or division. In institutions that offer nursing education programs for more than one (1) level of preparation and where the scope of administrative responsibility so requires, there shall be an individual administrator for each nursing education program. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**900. RENEWAL AND REINSTATEMENT FEES.**

Fees will be assessed for renewal of licensure or for reinstatement of a lapsed, disciplined, limited, or emeritus license. Any person submitting the renewal application and fee post-marked or electronically dated later than August 31 shall be considered delinquent and the license lapsed

and therefore invalid:

~~(3-30-07)~~(    )

**01. Licensed Professional Nurse Renewal Fee.** Licensed professional nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each odd-numbered year. (3-30-06)

**02. Licensed Practical Nurse Renewal Fee.** Licensed practical nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each even-numbered year. (3-30-06)

**03. Advanced Practice Professional Nurse.** Licensed advanced practice professional nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each odd-numbered year. (3-30-06)

**04. Emeritus License.** Emeritus status nurses will be assessed a renewal fee of twenty dollars (\$20) due by August 31 of the renewal year. (4-2-03)

**05. Reinstatement Fee.** Nurses requesting reinstatement of a lapsed, disciplined, limited, or emeritus license, or reinstatement of an emeritus license to active status, will be assessed the records verification and renewal fees. (3-30-07)

**06. Delay in Processing.** Processing of renewal applications not accompanied by cash, cashier's check, a money order, or other guaranteed funds may be delayed in order to allow clearance of personal checks through the licensee's bank. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**907. ~~LICENSES AND WALLET CERTIFICATES~~ **(RESERVED)**.**

~~**01. Duplicate Wallet Certificates.** Duplicate wallet certificates will be issued where the original wallet certificate has been lost or destroyed. Applicants requesting a duplicate wallet certificate must pay a ten dollar (\$10) application fee. (3-30-01)~~

~~**02. Revised Wallet Certificates.** Revised wallet certificates will be issued to reflect a change in name. Applicants requesting a revised wallet certificate must pay a ten dollar (\$10) application fee. (3-30-01)~~

~~**03. Duplicate Licenses.** (3-30-01)~~

~~**a.** Duplicate licenses are reproductions of original licenses. (3-30-01)~~

~~**b.** Applicants requesting a duplicate license must pay a ten dollar (\$10) application fee. (3-30-01)~~

~~**c.** Original licenses may not be revised. (3-30-01)~~

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS**

**DOCKET NO. 24-0301-1001**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-707, Idaho Code.

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

**The Board of Chiropractic Physicians would like to establish a code of ethics that will further protect the public. Changes from the published proposed rule are necessary due to comments received and considered by the Board. Appendix A number one (1) has been amended to clarify the duty to report and Appendix A number four (4) has been amended to exclude the Safekeeping Pre-paid Funds paragraph.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 379 through 381.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 18th day of November, 2010.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street, Boise, ID 83702  
(208) 334-3233 Ph. / (208) 334-3945 Fax

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-707, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 Board of Chiropractic Physicians would like to establish a code of ethics that will further protect the public.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

There is no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed, open meeting of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27,



2010.

DATED this 13th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0301-1001***

**602. -- ~~999~~604.(RESERVED).**

**605. CODE OF ETHICS (RULE 605).**

Chiropractic physicians are responsible for maintaining and promoting ethical practice in accordance with the ethical principles set forth in Appendix A in these rules. ( )

**606. -- 999. (RESERVED).**

**Appendix A – Chiropractic Physicians Code of Ethics**

**Preamble**

This code of ethics set forth principles for the ethical practice of chiropractic. All chiropractic physicians are responsible for maintaining and promoting ethical practice and otherwise complying with the terms of this code of ethics. To this end, the chiropractic physician shall act in the best interest of the patient. This code of ethics shall be binding on all chiropractic physicians.

**1. Duty to Report**

A. Duty to Report. It shall be the duty of every licensee to notify the Board through the Bureau of Occupational Licenses of any violation of the Chiropractic Act or Board Rules, if the licensee has personal knowledge of the conduct.

B. Reporting of Certain Judgments to Board. If a judgment is entered against a licensee in any court, or a settlement is reached on a claim involving malpractice exceeding fifty thousand dollars (\$50,000), a licensee shall report that fact to the Board within thirty (30) days. The licensee may satisfy the provision of this subsection if he/she provides the Board with a copy of the judgment or settlement.

If a licensee is convicted of a felony or a crime involving dishonesty, theft, violence, habitual use of drugs or alcohol, or sexual misconduct, he/she shall report that fact to the board within thirty (30) days following the conviction.

**2. Advertising of Research Projects**

Advertisement of Affiliation with Research Projects. If a licensee advertises any affiliation with a research project, he must make a written statement of the objectives, cost and budget of the project, and the person conducting the research. Such statements are to be made available at the request of the Board, to scientific organizations, and to the general public. The advertisement must indicate that it is supported by clinical research. Any willful failure to comply with these requirements will be deemed false and deceptive advertising under rule 450. Licensee must comply with all state and federal laws and regulations governing research projects on humans, and shall obtain “Institutional Review Board” (IRB) approval as established and set forth in the U.S. Code of Federal Regulations, Title 45, Part 46, Subpart A (45 CFR 46.101-46-505).

### **3. Sexual Misconduct**

The doctor-patient relationship requires the chiropractic physician to exercise utmost care that he or she will do nothing to exploit the trust and dependency of the patient. Sexual misconduct is a form of behavior that adversely affects the public welfare and harms patients individually and collectively. Sexual misconduct exploits the doctor-patient relationship and is a violation of the public trust. This section of the Code of Ethics shall not apply between a chiropractor and their spouse.

For the purposes of this subsection, sexual misconduct is divided into sub-categories based upon the severity of the conduct:

- A. Sexual Impropriety. Any behavior such as gestures, expressions, and statements which are sexually suggestive or demeaning to a patient, or which demonstrate a lack of respect for a patient's privacy.
- B. Sexual Violation. Physician-patient contact of a sexual nature, whether initiated by the physician or the patient.
- C. A chiropractic physician shall wait at least one (1) year (“waiting period”) following the termination of a professional doctor-patient relationship, before beginning any type of sexual relationship with a former patient.

### **4. Pre-Paid Funds**

- A. A chiropractic physician shall promptly refund any unearned fees within thirty (30) days upon request and cancellation of the pre-paid contract. A full accounting of the patient account shall be provided to the patient at the time of the refund or upon request.

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

DOCKET NO. 24-0601-1001

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-3717, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 382 through 387](#).**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 17th day of November, 2010.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., STE 220  
Boise, ID 83702  
(208) 334-3233 phone  
(208) 334-3945 fax

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

**EFFECTIVE DATE:** The effective date of the temporary rule is **July 28, 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 Section 54-3717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 Board of Occupational Therapists and Occupational Therapy Assistants in this set of rules is updating previous rules under the Board of Medicine to clarify the inactive status and the requirements to reinstate. Further, the Board adopted a rule that has caused concern to licensees and providers and limited service to the public. In an effort to address this concern while still protecting the public and ensuring their health, safety, and welfare, the Board is clarifying the level of supervision for students, graduates, and assistants. It also clarifies the supervision needed for certain treatment modalities.**

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

**The Board adopted a rule that has caused concern to licensees and providers and limited service to the public. In an effort to address this concern while still protecting the public and ensuring their health, safety, and welfare, the Board is clarifying the level of supervision for students, graduates, and assistants. It also clarifies the supervision needed for certain treatment modalities.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed open meeting.

**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 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 October 27, 2010.

DATED this 18th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0601-1001***

**011. SUPERVISION.**

An occupational therapist shall supervise and be responsible for the patient care given by occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants, and aides.

(3-29-10)

**01. Skill Levels.** The following skill levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapyists, student occupational therapy assistants and aides:

(3-29-10)( )

**a.** Entry Level - Working on initial skill development (zero to one (0-1) year experience) or working in a new area of practice;

(3-29-10)

**b.** Intermediate Level - Increased independence and mastery of basic roles and functions. Demonstrates ability to respond to new situations based on previous experience (generally one to five (1-5) years' experience);

(3-29-10)

**c.** Advanced Level - Refinement of skills with the ability to understand complex issues and respond accordingly.

(3-29-10)

**02. Supervision Levels.** The following supervision levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapyists, student occupational therapy assistants and aides:

~~(3-29-10)~~( )

**a.** Direct Line of Site Supervision - An occupational therapist or occupational therapy assistant must provide direct line of site supervision to an aide; (3-29-10)

**b.** Direct Supervision - Daily, direct contact at the site of work with the supervisor physically present at all times within the facility when the supervisee renders care and requires the supervisor to co-sign all documentation that is completed by the supervisee. This supervision is the minimal level of supervision required for students, ~~and~~ for entry or intermediate level occupational therapy assistants applying deep thermal and electrotherapeutic modalities, and for advanced level occupational therapy assistants who apply such modalities while lacking the education and training required in Subsection 012.01 of these rules; ~~(3-29-10)~~( )

**c.** Close Supervision - Daily, direct contact at the site of work. The occupational therapist provides direction in developing the plan of treatment and periodically inspects the actual implementation of the plan. This supervision is the minimal level of supervision required for entry level occupational therapy assistants and graduate occupational therapy assistants ~~who are working under a temporary license;~~ ~~(3-29-10)~~( )

**d.** Routine Supervision - Requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as by telephone or written communication. This supervision is the minimal level of supervision required for ~~a temporary occupational therapist or for an~~ graduate occupational therapists and intermediate level occupational therapy assistant. It also is the minimum level of supervision required for advanced level occupational therapy assistants applying deep thermal and electrotherapeutic modalities while possessing the education and training specified in Subsection 012.01 of these rules; ~~(3-29-10)~~( )

**e.** General Supervision - Initial direction and periodic review of the following: service delivery, update of treatment plans, and treatment outcomes. The supervisor need not at all times be present at the premises where the occupational therapy assistant is performing the professional services. However, not less than monthly direct contact must be provided, with supervision available as needed by other methods. This supervision is the minimal level of supervision required for an intermediate to advanced occupational therapy assistant. (3-29-10)

**03. Supervision Ratios.** An occupational therapist may supervise up to three (3) full-time occupational therapy assistants, but never more than two (2) entry level occupational therapy assistants. The total number of supervised occupational therapy assistants, ~~and~~ non-licensed occupational therapy personnel (including any graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants, and aides), and occupational therapists in training to provide deep thermal, electrotherapeutic modalities and wound care may not exceed five (5) without prior Board approval. The Board may permit the supervision of a greater number by an occupational therapist if, in the Board's opinion, there would be adequate supervision and the public's health and safety would be served. It is the supervising occupational therapist's responsibility to notify the Board of any circumstances requiring approval of a greater number and to submit a written plan for resolution of the situation. ~~(3-29-10)~~( )

**04. Record Keeping.** The occupational therapy assistant, graduate occupational therapist, and graduate occupational therapy assistant must maintain on file at the job site signed documentation reflecting supervision activities. This supervision documentation must contain the following: date of supervision, means of communication, and information discussed. Both the supervising occupational therapist and the ~~occupational therapy assistant/limited permit licensee~~ person being supervised must sign each entry. (3-29-10)( )

**05. Occupational Therapy Assistants.** Occupational Therapy Assistants may deliver occupational therapy services under the supervision of occupational therapists as follows. The occupational therapy assistant: (3-29-10)

**a.** May only select, implement, and modify therapeutic activities and interventions that are consistent with client goals, the requirements of the practice setting, and the occupational therapy assistant's demonstrated competency levels; (3-29-10)

**b.** Must not initiate a treatment program until the occupational therapist has evaluated the client and planned treatment for the client, or discharge the client from a treatment program without supervision from the occupational therapist; (3-29-10)

**c.** Must not perform an evaluation, but may contribute to the evaluation process with the supervision of the occupational therapist; (3-29-10)

**d.** May participate in the screening process by collecting data, such as records, by general observation and by conducting a general interview, and may communicate the information gathered to the occupational therapist; (3-29-10)

**e.** May track the need for reassessment, report changes in status that might warrant reassessment or referral, and administer the reassessment under the supervision of the occupational therapist; (3-29-10)

**f.** Must immediately discontinue any specific treatment procedure which appears harmful to the client, and so notify the occupational therapist; (3-29-10)

**g.** Is responsible for knowing about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement; (3-29-10)

**h.** May implement outcome measurements and provide needed client discharge resources. (3-29-10)

**06. Aides.** Aides do not provide skilled occupational therapy services. An aide is trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. An aide first must demonstrate competency to be able to perform the assigned, delegated client and non-client tasks. The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out non-client and client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan. An aide shall

function only under the direct line of sight supervision of an occupational therapist or occupational therapy assistant. An aide may provide: (3-29-10)

**a.** Non-client-related tasks, including clerical and maintenance activities and preparation of the work area or equipment. (3-29-10)

**b.** Client-related, routine tasks during which the aide may interact with the client. The following conditions must exist when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide: (3-29-10)

i. The outcome anticipated for the delegated task is predictable. (3-29-10)

ii. The client and environment are stable and will not require that judgment, interpretations, or adaptations be made by the aide. (3-29-10)

iii. The client has demonstrated some previous performance ability in executing the task. (3-29-10)

iv. The task routine and process have been clearly established. (3-29-10)

v. The aide has been trained and is able to demonstrate competency in carrying out the task and in using any necessary equipment. (3-29-10)

vi. The aide has been instructed on how to specifically carry out the delegated task with the specific client. (3-29-10)

vii. The aide knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapy assistant. (3-29-10)

**c.** The supervision of the aide needs to be documented for every client-related activity performed by an aide. Documentation must include information about frequency and methods of supervision used, the content of supervision, and the names and credentials of all persons participating in the supervisory process. (3-29-10)

**012. DEEP THERMAL AND ELECTROTHERAPEUTIC MODALITIES, AND WOUND CARE.**

**01. Qualifications.** Except as provided in *Paragraph Subsection* 012.01**~~2.b.i.~~** of these rules, a person may not utilize occupational therapy techniques involving deep thermal, electrotherapeutic modalities or perform wound care management unless the person is licensed by the Board as an occupational therapist and certified by the Hand Therapy Commission. In lieu of being certified by the Hand Therapy Commission, the person must have obtained education and training as described in Paragraphs 012.01.a. through 012.01.c. of this rule. (3-29-10)

~~*a.* Is licensed by the Board as an occupational therapist; and~~ (3-29-10)

~~*i.* Is certified by the Hand Therapy Commission; or~~ (3-29-10)



**#a.** ~~Has~~ **If the person utilizes techniques involving deep thermal, electrotherapeutic modalities, the person must have** successfully completed three (3) continuing education units in the application of deep thermal and electrotherapeutic modalities ~~and one and one-half (1.5) continuing education units in wound care management~~, along with one hundred sixty (160) hours of supervised, on-the-job or clinical internship or affiliation training, ~~pertaining to each area of deep thermal, electrotherapeutic such modalities and wound care management.~~ (3-29-10)( )

**b.** **If the person manages wound care, the person must have successfully completed one and one-half (1.5) continuing education units in wound care management, along with one hundred sixty (160) hours of supervised, on-the-job or clinical internship or affiliation training pertaining to wound care management.** ( )

**c.** **If the person utilizes both deep thermal, electrotherapeutic modalities and manages wound care, the person's supervised training for each may have overlapped, so that the one hundred sixty (160) hours for each were obtained concurrently through the same supervised, on-the-job or clinical internship or affiliation.** ( )

**02.** **Obtaining Education and Supervised Training.** A student occupational therapist, graduate occupational therapist, and an occupational therapist may utilize deep thermal, electrotherapeutic modalities or manage wound care while working towards obtaining the education and supervised training described in Section 012 of these rules. The supervisor must provide at least direct supervision to the student occupational therapist, and at least routine supervision to the graduate occupational therapist or occupational therapist. An ~~certified~~ occupational therapy assistant may apply deep thermal and electrotherapeutic modalities ~~only while the occupational therapy assistant is working under the direct supervision of a qualified occupational therapist.~~ **under routine supervision if the occupational therapy assistant has obtained an advanced level of skill as described in Subsection 011.01 of these rules and the education and training described in Subsection 012.01 of these rules. Otherwise, the occupational therapy assistant must work under direct supervision while applying such modalities.** (3-29-10)( )

**03.** **Supervised Training by Qualified Individual.** The supervised training described in Section 012 of these rules must be provided by an occupational therapist who is qualified as specified in this Subsection 012.01, or by another type of licensed health care practitioner whose education, training, and scope of practice enable the practitioner to competently supervise the person as to the modalities utilized and wound care management provided. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. LICENSE EXPIRATION AND RENEWAL.**

**01. Expiration Date.** An individual's license expires on the individual's birth date. The individual must annually renew the license before the individual's birth date in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with

Section 67-2614, Idaho Code.

(3-29-10)

**02. Reinstatement.** A license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Reinstatement of a license from inactive to active status is governed by Section 030. ~~(3-29-10)~~( )

**03. Application for Renewal.** In order to renew a license, a licensee must submit a timely, completed, Board-approved renewal application form and pay the required renewal fees. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. INACTIVE STATUS.**

~~The Board shall grant inactive status to a licensee who makes application for inactive status; or who does not practice as an Occupational Therapist or Occupational Therapy Assistant in Idaho. (1-5-88)~~

**01. Request for Inactive Status.** Occupational Therapists and Occupational Therapy Assistants requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. ( )

**02. Inactive License Status.** ( )

**a.** Licensees may not practice in Idaho while on inactive status. ( )

**b.** All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho, subject to Subsection 030.03 of these rules. ( )

**c.** Inactive license renewal notices and licenses will be marked "Inactive." ( )

**03. Reinstatement to Full Licensure from Inactive Status.** An inactive licensee may reinstate to active status by submitting a completed, Board-approved application and paying the appropriate fee. The licensee's application must demonstrate, to the Board's satisfaction, that during the two (2) years immediately preceding the application, the licensee completed at least two (2) CEUs recommended by the Idaho Occupational Therapy Association and approved by the Board, along with at least ten (10) Board-approved professional development units (PDUs), as specified in Section 025 of these rules. ( )

**031. ~~REINSTATEMENT TO FULL LICENSURE FROM INACTIVE STATUS~~ (RESERVED).**

~~An individual desiring reinstatement to full active licensure to practice as an Occupational Therapist or Occupational Therapy Assistant shall submit a completed written application to the Board, on the forms prescribed by the Board together with the license and reinstatement fees. The application shall be verified and under oath (Subsection 021.01, above). The Board may request~~

~~such other information deemed necessary to identify and evaluate the applicant's proficiency.~~  
~~(1-5-88)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**041. FEES.**

- 01. Fees.** Necessary fees shall accompany applications. Fees shall not be refundable. (3-29-10)
- 02. Initial Licensure.** The fee for initial licensure of occupational therapists shall be one hundred fifteen dollars (\$115) and the fee for occupational therapy assistants shall be eighty-five dollars (\$85). (3-29-10)
- 03. Limited Permit or Temporary License.** The fee for a limited permit or temporary license shall be thirty dollars (\$30). (3-29-10)
- 04. Active License Renewal Fee.** The annual renewal fee for an active license shall be seventy dollars (\$70) for occupational therapists and fifty dollars (\$50) for occupational therapy assistants. ~~(3-29-10)~~( )
- 05. Reinstatement Fee.** The fee to reinstate a lapsed license shall be thirty-five dollars (\$35). (3-29-10)
- 06. Inactive License Renewal Fee.** The annual renewal fee for an inactive licensure shall be fifty dollars (\$50) for occupational therapists and occupational therapy assistants. ~~(3-29-10)~~( )
- 07. Inactive to Active License Fee.** The fee for reinstating Aan inactive license may be converted to an active license by application to the Board and payment of required is the difference between the current inactive and active license renewal fees. ( )
- a:** ~~The fee for converting an inactive to an active license shall be forty dollars (\$40) and the annual renewal fee for each year not actively licensed minus inactive fees previously paid.~~ (3-29-10)
- b:** ~~Before the license will be converted the applicant must account for the time during which an inactive license was held. The Board may, in its discretion, require a personal interview.~~ (4-2-03)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.09.01 - RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

**DOCKET NO. 24-0901-1001**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-1604, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 392 through 394.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 3<sup>rd</sup> day of November, 2010.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
Boise, ID 83702  
(208) 334-3233 phone  
(208) 334-3945 fax

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1604, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 Board of Examiners of Nursing Home Administrators would like verification that an applicant obtained supervised experience in all six domains and that the preceptor training be in addition to full time work. The rule clarifies that full time shall be at least thirty-two hours per week which would allow at least eight hours per week for direct training between the preceptor and trainee. It also requires that the preceptor be re-certified every ten years.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussion on the changes were noticed on an agenda and discussed in a public meeting.

**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 Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written

comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 13th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0901-1001**

**400. NURSING HOME ADMINISTRATORS-IN-TRAINING (RULE 400).**

**01. Related Health Care Field.** “Related health care field” shall mean a field in health care related to administration. (7-1-93)

**02. Trainees.** Trainees must work on a full time basis in any capacity in an Idaho licensed nursing home setting. Full time shall be at least a ~~forty~~ thirty-two (~~40~~32) hour per week work schedule with consideration for normal leave taken. Failure to comply with this rule or Section 54-1610, Idaho Code, shall not receive credit as a Nursing Home Administrator-In-Training. (~~4-2-08~~)(    )

**a.** Each trainee shall register with the Board as a Nursing Home Administrator-In-Training (AIT) by submitting an application provided by the Board together with the required fee. The effective date of each AIT program shall be the date the Board approves the application. (3-13-02)

**b.** Quarterly reports for those trainees employed in a nursing home must reflect that the preceptor of the trainee has instructed, assisted and given assignments as deemed necessary to fulfill the requirements of Subsection 400.03. (7-1-98)

**03. Nursing Home Administrator-in-Training Requirements.** A Nursing Home Administrator-in-Training shall be required to train in all ~~phases~~ domains of nursing home administration including the following: (~~7-1-93~~)(    )

- a.** Resident Care Management. (7-1-98)
- b.** Personnel Management. (7-1-93)
- c.** Financial Management. (7-1-93)
- d.** Environmental Management. (7-1-98)
- e.** Meeting Regulations and Governing Entities Directives. (7-1-98)
- f.** Organizational Management. (7-1-98)

**g.** Completion of a specialized course of study in nursing home long-term health care administration approved by NAB or otherwise approved by the Board. (4-6-05)

**04. Facility Administrator.** The trainee must spend no less than thirty-two (32) hours a month with the preceptor in a training and/or observational situation in the six (6) ~~areas~~ domains of nursing home administration as outlined in Subsection 400.03. Time spent with the preceptor must be in addition to the full time work that the trainee must perform under Subsection 400.02, unless the Administrator-in-Training role is designated as a full time training position. Collectively, over the twelve (12) month period, Quarterly reports must reflect particular emphasis on ~~the~~ all six (6) ~~phases~~ domains of nursing home administration during the time spent in the nursing home. ~~(5-3-03)~~( )

**05. Preceptor Certification.** (7-1-93)

**a.** A nursing home administrator who serves as a preceptor for a nursing home administrator-in-training must be certified by the Board of Examiners of Nursing Home Administrators. The Board will certify the Idaho licensed nursing home administrator to be a preceptor who: (7-1-98)

**i.** Is currently practicing as a nursing home administrator and who has practiced a minimum of two (2) consecutive years as a nursing home administrator; and (7-1-98)

**ii.** Who successfully completes a six (6) clock hour preceptor orientation course approved by the Board. (7-1-93)

**b.** The orientation course will cover the philosophy, requirements and practical application of the nursing home administrator-in-training program and a review of the six (6) phases of nursing home administration as outlined in Subsection 400.03. (7-1-93)

**c.** The preceptor must be re-certified by the Board every ten (10) years. ( )

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.13.01 - RULES OF THE PHYSICAL THERAPY LICENSURE BOARD**

**DOCKET NO. 24-1301-1001**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2206, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 395 and 396.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 3<sup>rd</sup> day of November, 2010.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., STE 220  
Boise, ID 83702  
(208) 334-3233 phone  
(208) 334-3945 fax



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

**EFFECTIVE DATE:** The effective date of the temporary rule is **July 16, 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 Section 54-2206, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 2010 legislature passed House Bill 470 which amended Section 54-2212, Idaho Code, to require that foreign educated physical therapists pass an English proficiency examination to qualify for a license if English is not the applicant's native language. This rule identifies the standardized examinations.**

**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:

**To comply with a new law which passed last session.**

**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: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are due to amendment in statute and were discussed in an open, noticed meeting.

**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 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 October 27, 2010.

DATED this 20th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1301-1001***

**175. REQUIREMENTS FOR LICENSURE (RULE 175).**

An individual shall be entitled to a license upon meeting the following requirements: (4-2-08)

**01. Application.** Submission of a complete application establishing that the individual has met the qualifications as set forth in these rules. (4-2-08)

**02. Examination.** Submission of proof that the individual has successfully passed the NPTE with a scaled score of at least six hundred (600) and the jurisprudence examination with a score of at least seventy-five percent (75%). Foreign educated individuals whose native language is not English shall submit proof of successfully passing one (1) of the following English proficiency exams: (4-2-08)(    )

a. Test of English as a Foreign Language (TOEFL) with minimum passing scores of two hundred twenty (220) for computer test and five hundred sixty (560) for paper test; (    )

b. Test of English as a Foreign Language - internet based test (TOEFL IBT) with minimum passing scores of twenty-four (24) in writing; twenty-six (26) in speaking, twenty-one (21) in reading, and eighteen (18) in listening; or (    )

c. As otherwise approved by the Board. (    )

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.13.01 - RULES OF THE PHYSICAL THERAPY LICENSURE BOARD**

**DOCKET NO. 24-1301-1002**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2206, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 397 through 402.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 3<sup>rd</sup> day of November, 2010.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
Boise, ID 83702  
(208) 334-3233 phone  
(208) 334-3945 fax

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2206, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 Physical Therapy Board is updating its rules to correct the name of the U.S. Department of Education and to allow a successor entity. The Board is also adding a section to allow for termination of applications that have lacked activity for one year upon notification to the applicant. This will help reduce the number of files that need to be maintained. Finally, the Board would like to allow four (4) hours continuing education credit for the supervision of physical therapist students or physical therapist assistant students as this supervision is an important part of the training of future licensees.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussion on the changes were noticed on an agenda and discussed in a public meeting.

**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 Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 20th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1301-1002***

**010. DEFINITIONS (RULE 10).**

- 01. Board.** The Physical Therapy Licensure Board. (3-19-07)
- 02. Bureau.** Bureau means the Idaho Bureau of Occupational Licenses as created in section 67-2602, Idaho Code. (3-19-07)
- 03. Physical Therapist.** An individual who meets all the requirements of Title 54, Chapter 22, Idaho Code, holds an active license and who engages in the practice of physical therapy. (3-19-07)
- 04. Physical Therapist Assistant.** An individual who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. (3-19-07)
- 05. Supportive Personnel.** An individual, or individuals, who are neither a physical therapist or a physical therapist assistant, but who are employed by and/or trained under the direction of a licensed physical therapist to perform designated non-treatment patient related tasks and routine physical therapy tasks. (3-19-07)
- 06. Non-Treatment Patient Related Tasks.** Actions and procedures related to patient care that do not involve direct patient treatment or direct personal supervision, but do require a level of supervision not less than general supervision, including, but not limited to: treatment area preparation and clean-up, equipment set-up, heat and cold pack preparation, preparation of a patient for treatment by a physical therapist or physical therapist assistant, transportation of patients to and from treatment, and assistance to a physical therapist or physical therapist assistant when such assistance is requested by a physical therapist or physical therapist assistant when safety and effective treatment would so require. (3-19-07)
- 07. Routine Physical Therapy Tasks.** Actions and procedures within the scope of practice of physical therapy, which do not require the special skills or training of a physical therapist or physical therapist assistant, rendered directly to a patient by supportive personnel at the request of and under the direct personal supervision of a physical therapist or physical therapist assistant. (3-19-07)

- 08. Testing.** (3-19-07)
- a.** Standard methods and techniques used in the practice of physical therapy to gather data about individuals including: (3-19-07)
- i. Electrodiagnostic and electrophysiological measurements; (3-19-07)
  - ii. Assessment or evaluation of muscle strength, force, endurance and tone; (3-19-07)
  - iii. Reflexes; (3-19-07)
  - iv. Automatic reactions; (3-19-07)
  - v. Posture and body mechanics; (3-19-07)
  - vi. Movement skill and accuracy; (3-19-07)
  - vii. Joint range of motion and stability; (3-19-07)
  - viii. Sensation; (3-19-07)
  - ix. Perception; (3-19-07)
  - x. Peripheral nerve function integrity; (3-19-07)
  - xi. Locomotor skills; (3-19-07)
  - xii. Fit, function and comfort of prosthetic, orthotic, and other assistive devices; (3-19-07)
  - xiii. Limb volume, symmetry, length and circumference; (3-19-07)
  - xiv. Clinical evaluation of cardiac and respiratory status to include adequacy of pulses, noninvasive assessment of peripheral circulation, thoracic excursion, vital capacity, and breathing patterns; (3-19-07)
  - xv. Vital signs such as pulse, respiratory rate, and blood pressure; (3-19-07)
  - xvi. Activities of daily living; and the physical environment of the home and work place; and (3-19-07)
  - xvii. Pain patterns, localization and modifying factors; and (3-19-07)
  - xviii. Photosensitivity. (3-19-07)
- b.** Specifically excluded are the ordering of electromyographic study, electrocardiography, thermography, invasive vascular study, selective injection tests, or complex

cardiac or respiratory function studies without consultation and direction of a physician. (3-19-07)

**09. Functional Mobility Training.** Includes gait training, locomotion training, and posture training. (3-19-07)

**10. Manual Therapy.** Skilled hand movements to mobilize or manipulate soft tissues and joints for the purpose of: (3-19-07)

**a.** Modulating pain, increasing range of motion, reducing or eliminating soft tissue swelling, inflammation or restriction; (3-19-07)

**b.** Inducing relaxation; (3-19-07)

**c.** Improving contractile and non-contractile tissue extensibility; and (3-19-07)

**d.** Improving pulmonary function. (3-19-07)

**11. Physical Agents or Modalities.** Thermal, acoustic, radiant, mechanical, or electrical energy used to produce physiologic changes in tissues. (3-19-07)

**12. General Supervision.** A physical therapist's availability at least by means of telecommunications, which does not require a physical therapist to be on the premises where physical therapy is being provided, for the direction of a physical therapist assistant. (3-19-07)

**13. Direct Supervision.** A physical therapist's or physical therapist assistant's physical presence and availability to render direction in person and on the premises where physical therapy is being provided. (3-19-07)

**14. Direct Personal Supervision.** A physical therapist's or physical therapist assistant's direct and continuous physical presence and availability to render direction, in person and on the premises where physical therapy is being provided. The physical therapist or physical therapist assistant must have direct contact with the patient during each session and assess patient response to delegated treatment. (3-19-07)

**15. Supervising Physical Therapist.** A licensed physical therapist who developed and recorded the initial plan of care and/or who has maintained regular treatment sessions with a patient. Such physical therapist's designation of another licensed physical therapist if the physical therapist who developed and recorded the initial plan of care or maintained regular treatment sessions is not available to provide direction at least by means of telecommunications. (3-19-07)

**16. Nationally Accredited School.** A school or course of physical therapy or physical therapist assistant with a curriculum approved by: (3-19-07)

**a.** The American Physical Therapy Association (APTA) from 1926 to 1936; or the APTA Accreditation Commission; or (3-19-07)

**b.** The Council on Medical Education and Hospitals of the American Medical

Association from 1936 to 1960; or (3-19-07)

c. An accrediting agency recognized by the U.S. ~~Commissioner~~ Department of Education, the Council on Postsecondary Accreditation, or a successor entity, or both. ~~(3-19-07)~~( )

**17. Examination.** The examination shall be the National Physical Therapy Examination (NPTE) administered by Federation of State Boards of Physical Therapy. The examination may also include a jurisprudence examination adopted by the Board. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. APPLICATION (RULE 150).**

Each applicant shall submit a completed written application on forms provided by the Board together with applicable fees. The application shall be verified under oath and shall require the following information: (3-19-07)

- 01. Education.** The educational background of the applicant; (3-19-07)
- 02. Evidence of Graduation.** Evidence of graduation from a nationally accredited school; (3-19-07)
- 03. Criminal Convictions.** The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; (3-19-07)
- 04. Disciplinary Action.** The disclosure of any disciplinary action against the applicant by any professional regulatory agency; (3-19-07)
- 05. License or Registration Denial.** The disclosure of the denial of registration or licensure by any state or district regulatory body; (3-19-07)
- 06. References.** Two (2) references from individuals, other than relatives or individuals living with the applicant, who have at least two (2) years of personal knowledge of the applicant's character and ability to provide physical therapy; (3-19-07)
- 07. Photograph.** An un-mounted passport type photograph of the applicant, taken not more than one (1) year prior to the date of application; and (3-19-07)
- 08. Other Information.** Such other information as the Board deems necessary to identify and evaluate the applicant's credentials. (3-19-07)
- 09. Incomplete applications.** The Board shall not review incomplete applications and shall not approve licensure for applicants who have failed to provide adequate proof of having met the licensure requirements. (3-19-07)



**10. Lack of Activity.** Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for twelve (12) consecutive months shall be deemed denied and shall be terminated upon thirty (30) days written notice unless good cause is established to the Board. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. CONTINUING EDUCATION REQUIREMENT (RULE 250).**

On and after January 1, 2008, every person holding a license issued by the Board must annually complete sixteen (16) contact hours of continuing education prior to license renewal. (3-19-07)

**01. Contact Hours.** The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the board. (3-19-07)

**02. Documentation of Attendance.** It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided to the board upon request by the board or its agent. (3-19-07)

**03. Excess Hours.** Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. Hours in excess of the required hours may be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (3-19-07)

**04. Compliance Audit.** The board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the board of meeting the continuing education requirement be submitted to the bureau. Failure to provide proof of meeting the continuing education upon request of the board shall be grounds for disciplinary action. (3-19-07)

**05. Special Exemption.** The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the board. (3-19-07)

**06. Continuing Education Credit Hours.** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity approved by the Board. (3-19-07)

**a. General Criteria.** A continuing education activity which meets all of the following criteria is appropriate for continuing education credit: (3-19-07)

- i. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee; (3-19-07)
  - ii. Pertains to subject matters integrally related and germane to the practice of the profession; (3-19-07)
  - iii. Conducted by individuals who have specialized education, training and experience to be considered qualified to present the subject matter of the program. The Board may request documentation of the qualifications of presenters; (3-19-07)
  - iv. Application for Board approval is accompanied by a paper, manual or outline which describes the specific offering and includes the program schedule, goals and objectives; and (3-19-07)
  - v. Provides proof of attendance to licensees in attendance including: Date, location, course title, presenter(s); Number of program contact hours (One (1) contact hour equals one (1) hour of continuing education credit.); and the official signature or verification of the program sponsor. (3-19-07)
- b. Specific Criteria. Continuing education hours of credit may be obtained by:** (3-19-07)
- i. Presenting professional programs which meet the criteria listed in these rules. Two (2) hours of credit will be awarded for each hour of presentation by the licensee. A course schedule or brochure must be maintained for audit; (3-19-07)
  - ii. Providing official transcripts indicating successful completion of academic courses which apply to the field of physical therapy in order to receive the following continuing education credits: (3-19-07)
    - (1) One (1) academic semester hour = fifteen (15) continuing education hours of credit; (3-19-07)
    - (2) One (1) academic trimester hour = twelve (12) continuing education hours of credit; (3-19-07)
    - (3) One (1) academic quarter hour = ten (10) continuing education hours of credit. (3-19-07)
  - iii. Attending workshops, conferences, symposiums or electronically transmitted, live interactive conferences which relate directly to the professional competency of the licensee; (3-19-07)
  - iv. Authoring research or other activities which are published in a recognized professional publication. The licensee shall receive five (5) hours of credit per page; (3-19-07)
  - v. Viewing videotaped presentations if the following criteria are met: (3-19-07)

- (1) There is a sponsoring group or agency; (3-19-07)
- (2) There is a facilitator or program official present; (3-19-07)
- (3) The program official may not be the only attendee; and (3-19-07)
- (4) The program meets all the criteria specified in these rules; (3-19-07)
- vi. Participating in home study courses that have a certificate of completion; (3-19-07)
- vii. Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics; (3-19-07)
- viii. Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics; ~~and~~ ~~(3-19-07)~~( )
- ix. Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics: ~~and~~ ~~(3-19-07)~~( )
- x. Supervision of a physical therapist student or physical therapist assistant student in an accredited college program. The licensee shall receive four (4) hours of credit per year. ( )

**07. Submitting False Reports or Failure to Comply.** The Board may condition, limit, suspend, or refuse to renew the license of any individual whom the Board determines submitted a false report of continuing education or failed to comply with the continuing education requirements. (3-19-07)

**08. Failure to Receive the Renewal Application.** Failure to receive the renewal application shall not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal application and renewal fee. (3-19-07)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS**

**DOCKET NO. 24-1401-1001**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-3204, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 403 through 406.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 15th day of November, 2010.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
Boise, ID 83702  
(208) 334-3233 phone  
(208) 334-3945 fax

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3204, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 Board of Social Work Examiners is removing rules given passage of House Bill 537 which eliminated licensure based upon education in a related field. The Board is also clarifying the type of supervised experience required for licensure at the clinical level. This clarification is needed to ensure that clinical level social workers have adequate experience in treatment.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed, open meeting of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27,

2010.

DATED this 26th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-1001**

**100. APPROVED COLLEGES ~~AND RELATED FIELDS~~ (RULE 100).**

~~Social work and social work practice is a professional discipline requiring specialized knowledge and training. (7-1-93)~~

~~**01. College or University Approved by the Board.** Any college, university, or school of social work which is accredited or is a candidate for accreditation by the Northwest Association of Secondary and Higher Schools or any similar accrediting body. (5-3-03)( )~~

~~**02. Related Fields.** A baccalaureate degree that includes thirty-six (36) semester credit hours with a grade of "C" or above in each course, in which the content is consistent with that recommended as minimal to social work training by an approved accrediting body. Eighteen (18) of the thirty-six (36) semester credit hours shall be taught by a social worker with a graduate degree from an accredited school of social work. The basic content areas to be required shall include: (5-3-03)~~

~~**a.** Social work practice is to include a methods content of a minimum of six (6) semester credit hours; and a social work practicum with a minimum of nine (9) semester credit hours. The methods courses are to be taken previous to participation in practicum and are to be taught by a faculty member with a graduate degree (MSW) from an accredited school of social work. The practicum is to be supervised by a faculty member who has a graduate degree (MSW) from an accredited school of social work. The on-site supervisor is to be a licensed social worker. Both the methods courses and the practicum must have been completed within the past five (5) years (date computed from time of application). The program providing the practice content and internship experience is developed and monitored to assure that internship students demonstrate application of the knowledge, values and skills taught within the required basic content areas. (7-1-96)~~

~~**b.** Social welfare policy and services shall include current policies and services, and shall be taught by a faculty member with a graduate degree in social work. (7-1-96)~~

~~**c.** Human behavior and social environment shall include human behavior in the social environment with demonstrated content representing five (5) human systems: individual, family, group, organization and community. (7-1-96)~~

~~**d.** Social research shall include social statistics and research methods. (7-1-96)~~

~~**e.** Ethics shall include any three (3) credit course from a "college or university~~

~~approved by the board” which includes the word “ethics” in the course title. (7-1-96)~~

~~f. Cultural diversity shall include a three (3) credit course from a “college or university approved by the board” which includes content specific to ethnic minority group(s). (7-1-96)~~

~~g. Course content and curriculum preparing students for practice will be evaluated by board review of course and program description provided by the college or university. (7-1-96)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. PRACTICE OF SOCIAL WORK.**

**01. Baccalaureate Social Work.** The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social workers are prohibited from performing psychotherapy. (3-20-04)

**02. Master’s Social Work.** The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master’s social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. (3-20-04)

**03. Clinical Social Work.** The practice of clinical social work is a specialty within the practice of master’s social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice. (3-20-04)

**04. Private Practice of Social Work.** As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions. (5-3-03)

**05. Employment of a Social Worker.** A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

**06. Supervision.** Supervised experience shall be required for both independent practice status and clinical licensure. Consultative-teaching supervision is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. A total of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years is required. Actual supervisor contact shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice and must occur on a regular and on-going basis and consist of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Group supervision totaling no more than fifty (50) hours will be allowed for groups of no more than six (6) persons and the allowable credit shall be prorated at the two to one (2 to 1) ratio (total session minutes divided by total supervisees multiplied by two (2) equals maximum allowable credit per supervisee for the session. i.e. an individual attending a one (1) hour group supervisory session consisting of six (6) supervisees shall be allowed twenty (20) minutes of group supervision credit). Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.06.c. (4-2-08)

**a.** Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the baccalaureate, masters, or clinical level. (3-20-04)

**b.** Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (5-3-03)

**c.** Supervision of master level social workers pursuing licensure as clinical level practitioners must be provided by either a licensed clinical social worker who is registered as a supervisor, a licensed clinical psychologist, a person licensed to practice medicine and surgery who practices in the area of psychiatry, a licensed clinical professional counselor registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists or a licensed marriage and family therapist registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists and must focus on clinical social work as defined. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker registered as a supervisor. A master level social worker pursuing licensure at the clinical level must document three thousand (3000) hours of supervised practice as follows: ( )



i. ~~One thousand seven hundred fifty (1,750) hours of direct client contact of the required three thousand (3,000) hours~~ involving treatment in clinical social work as defined; and ~~(4-2-08)~~ ( )

ii. One thousand two hundred fifty (1,250) hours involving assessment, diagnosis, and other clinical social work as defined. ( )

**d.** Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor being restricted by the Board from providing further supervision. (3-20-04)

**07. Supervised Practice Required.** To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)

**a.** Meet the requirements set forth in Subsection 201.06; (4-2-08)

**b.** Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (5-3-03)

**c.** Not have more than two (2) supervisors at any given time. (5-3-03)

**08. Out-of-State Supervised Experience.** The Board may consider supervised experience obtained outside the state of Idaho submitted for Idaho license purposes. Supervised experience must be provided by a licensed clinical social worker, licensed marriage and family therapist, licensed clinical psychologist, or a person licensed to practice medicine and surgery who practices in the area of psychiatry. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker. The applicant must meet the other requirements of supervised practice as set forth in these rules. (4-2-08)

**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 - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-5405, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [July 7, 2010 Idaho Administrative Bulletin, Vol. 10-7, pages 94 and 95.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 3<sup>rd</sup> day of November, 2010.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
Boise, ID 83702  
(208) 334-3233 phone  
(208) 334-3945 fax

***THIS NOTICE PUBLISHED WITH THE 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.

**THE FOLLOWING IS THE TEXT OF 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)( )~~**

**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; ( )

**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. ( )

**fh.** 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: ~~(3-29-10)~~( )

**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 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1001

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 37-2715, Idaho Code.

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

**Changes remove unnecessary language from Subsection 159.02, and Paragraph 159.02.g. is being removed because manufacturers do not always include information regarding physical product descriptions.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 425 through 435.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

DATED this 1<sup>st</sup> day of November, 2010.

Mark Johnston, R.Ph., Executive Director  
Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720, Boise, ID 83720-0067  
Phone: (208) 334-2356 / Fax: (208) 334-3536

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 37-2715, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 proposed rule changes are necessary to allow the electronic prescribing of controlled substances, in conjunction with June 1, 2010 Drug Enforcement Administration (DEA) changes allowing the electronic prescribing of controlled substances. The proposed rules eliminate requirements for handwritten signatures; prescriptions written in ink, indelible pencil, or typewriter; documentation allowed only on paper, hard copy prescriptions; the need for a prescription hard copy; and certain prescriptions that must be promptly reduced to writing. Electronic prescribing and electronic prescription drug order records for controlled substances will be allowed in accordance with federal law, as per this proposed rule. The term “emergency” has also been defined, as required by Section 37-2722(b), Idaho Code. Additional updates include prescription drug order and prescription labeling minimum requirements, as well as listing additional circumstances when a controlled substance inventory is to be taken.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes were necessitated to be in harmony with 2010 federal DEA rule changes.

**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 Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1001**

**159. PRESCRIPTION DRUG ORDER MINIMUM REQUIREMENTS.**

**01. Prescription Drug Order Requirements.** ~~All prescriptions shall at a minimum indicate~~ A prescription drug order must comply with applicable requirements of federal law and must include at least the following: ( )

**a.** ~~f~~The name and, if for a controlled substance, the full name and address of the patient; ( )

**b.** ~~f~~The date ~~written~~ issued; ( )

**c.** The name, strength, quantity, and if for a controlled substance, the dosage form of the medication prescribed; ( )

**d.** ~~f~~The directions for use; ( )

**e.** ~~f~~The name and, strength, and amount of the medication if for a controlled substance, the address and DEA registration number of the prescriber; and ( )

**f.** ~~f~~ the name of the prescriber; and, if written paper, the pre-printed, stamped, or hand-printed name of the prescriber and, if paper or electronic, the handwritten prescriber's written or electronic signature of the prescriber. No prescription is refillable unless specifically indicated by the prescriber. Further requirements for controlled substance prescriptions are contained in Subsection 433.10. of these rules. (7-1-98)( )

**02. Prescription Labels.** Unless otherwise directed by these rules, Any prescription drug must be dispensed shall in a container that bears a label containing the following information: ( )



- a.** ~~†~~The name, address, and telephone number of the dispenser (person or business); ( )
- b.** ~~†~~The serial number; ( )
- c.** ~~and~~ The date of the prescription or its filling, is filled; ( )
- d.** ~~†~~The name of the prescriber; ( )
- e.** ~~and~~ ~~†~~The name of the patient; ( )
- f.** Unless otherwise directed on the order by the prescriber, the name and strength of the drug (the generic name and its manufacturer's name or the brand name); ( )
- g.** The quantity of item dispensed; ( )
- h.** ~~†~~The directions for use, ~~name (generic or brand) of the medication (including the manufacturer's name if a generic), and;~~ ( )
- i.** ~~a~~Any cautionary statements information as may be required to protect the consumer including, when advisable or desirable for proper use and patient safety; ( )
- j.** An expiration date which is the lesser of: ( )
- i.** One (1) year from the date of dispensing; ( )
- ii.** ~~†~~The manufacturer's original expiration date, ~~the quantity of item dispensed and;~~ ( )
- iii.** The appropriate expiration date for a reconstituted suspension or beyond use date for a compounded product; or ( )
- iv.** A shorter period when warranted, pursuant to the pharmacist's professional judgment, to protect the health or safety of the individual; ( )
- k.** The number of refills authorized; and ( )
- l.** ~~†~~The initials of the ~~person~~ dispensing ~~the prescription and the statement: "Warning: Federal or state law prohibits the transfer of this prescription to any person other than the person for whom it was prescribed." When appropriate, the prescriber may request "Do Not Label"; in such cases the medication name will not appear~~ pharmacist. (7-1-98)( )

**160. PRESCRIPTION DRUG ORDER TRANSFER.**

**01. Communicating Prescription Drug Order Transfers.** Except for prescription drug orders for Schedule II controlled substances, A pharmacist may transfer prescription drug order information for the purpose of filling or refilling a prescription only if the information is communicated orally verbally directly from pharmacist to pharmacist. ( )

~~a.~~ ~~Such oral~~ Prescription drug order information ~~can~~ may also be communicated verbally by a student pharmacist, under the direct supervision of a pharmacist, to another pharmacist as long as one (1) of the parties involved in the communication is a pharmacist. ( )

~~b.~~ ~~In the alternative, the~~ When transferring ~~pharmacist may transfer the prescription order information~~ by facsimile transmission, ~~to the receiving pharmacist. In the case of a facsimile transmission, the transmission shall~~ the transfer document must be signed by the transferring pharmacist. (3-29-10)( )

**02. Documentations Required of the Transferring of a Prescription Pharmacy.**  
The pharmacist ~~who transfers the~~ transferring prescription ~~shall:~~ drug order information must void or otherwise (5-8-09)

~~a.~~ ~~Invalidate the original prescription by writing the word "void" across the face of the form;~~ drug order and (7-1-93)

~~b.~~ ~~On the back of the form,~~ record the following information: ( )

~~a.~~ ~~his~~ The name of the transferring pharmacist; ( )

~~b.~~ The name of the receiving ~~individual~~ pharmacist; ( )

~~c.~~ The name of the receiving pharmacy; ( )

~~d.~~ The date of the transfer; ( )

~~e.~~ ~~and~~ The number of authorized refills available; and (7-1-93)( )

~~f.~~ For a prescription drug order written for a controlled substance, the address and DEA registration number of the receiving pharmacy. ( )

**03. Documentations Required of the Receipt of a Transferred Prescription Receiving Pharmacy.**  
The pharmacist ~~who receives~~ ing a ~~the~~ transferred prescription drug order shall: must (5-8-09)

~~a.~~ ~~Reduce the transferred information to writing including all information required by law or rule and a notation~~ document that the prescription drug order is a "transfer"; and (7-1-93)

~~b.~~ ~~On the form,~~ record the following information: ( )

~~a.~~ ~~his~~ The name of the receiving pharmacist; ( )

~~b.~~ ~~The~~ name of the transferring ~~individual~~ pharmacist; ( )

~~c.~~ ~~The~~ name of the transferring pharmacy; ( )

- d.** ~~†~~The date of issuance of the original ~~dispensing and transfer;~~ prescription drug order; ( )
- e.** ~~†~~The number of refills authorized by the original prescription drug order; ( )
- f.** ~~†~~The number of ~~valid~~ authorized refills ~~remaining;~~ available; and ( )
- g.** If transferring a prescription drug order written for a controlled substance; ( )
- i.** ~~†~~The date and locations of ~~the last~~ all previous refills; and ( )
- ii.** ~~†~~The serial address, DEA registration number, and assigned prescription number of the transferring pharmacy that originally filled the prescription, ~~transferred~~ when different. (3-29-10)( )

~~**04. Documenting Prescription Transfers by Computer.** Transferring pharmacies that utilize a computer prescription database that contains all of the prescription information required by law or rule may enter the information required under Section 160 of these rules into the pharmacy's prescription database (including de-activation of the transferred prescription in the database of the transferring pharmacy) in lieu of entry of the required information on the original written prescription. (3-29-10)~~

~~**05. Documenting Receipt of Prescription Transfers by Computer.** A receiving pharmacy that utilizes a computer prescription database that contains all of the prescription information required by law or rule must generate a hard copy to be treated as a new prescription; however, the receiving pharmacy may enter the information required under Section 160 of these rules into the pharmacy's prescription database in lieu of writing the information on the hard copy of the new prescription. (3-29-10)~~

~~**074. Transferring Prescription Between Pharmacies Using Common Electronic Prescription Files.** (7-1-98)( )~~

~~**a.** Two (2) or more ~~p~~Pharmacies may establish and use a common electronic ~~prescription~~ file to maintain required dispensing information. Pharmacies using ~~the a~~ common electronic file are not required to transfer prescriptions ~~or drug order~~ information for dispensing purposes between or among other pharmacies ~~using in~~ sharing the ~~same~~ common electronic ~~prescription~~ file. (3-29-10)( )~~

~~**b.** All ~~e~~Common electronic ~~prescription~~ files must contain complete and accurate records of each prescription and refill dispensed. ~~Hard copies must be generated and treated as new prescriptions by the receiving pharmacies.~~ (7-1-98)( )~~

~~**015. Transferring Prescriptions Drug Orders for Controlled Substances.** A prescription drug order for a controlled substance listed in Schedules III, IV, or V may be transferred only from the pharmacy where it was originally filled and never from the pharmacy that received the transfer, except that pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's~~

authorization.

(7-1-93)( )

~~a. In addition to the information required in Subsection 160.02 the pharmacist transferring the prescription shall record on the back of the original order the DEA number and address of the pharmacy to which the transfer was made.~~ (7-1-93)

~~b. The receiving pharmacist must record the DEA number and address of the pharmacy transferring the order.~~ (7-1-93)

**06. Transferring Prescription Drug Order Refills.** Prescriptions drug orders for non-controlled drugs substances may be transferred more than one (1) time as long as if there are refills remaining and all of the provisions of these rules other legal requirements are followed satisfied. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**162. PRESCRIPTION DRUG ORDER EXPIRATION.**

Prescription drug orders ~~that are legally refillable must have the refill instructions indicated on their face. All prescription orders~~ expire no later than fifteen (15) months after the date of issue. ~~For long term medication orders a~~ new prescription drug order must be obtained and a new file number issued at least every fifteen (15) months for maintenance medications. (4-6-05)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**433. DEFINITIONS -- (H - Z).**

**01. Hospital.** The term “hospital” means an institution for the care and treatment of the sick and injured approved by the Idaho Department of Health and Welfare and entrusted with the custody of controlled substances and the professional use of controlled substances under the direction of a practitioner. (7-1-93)

**02. Individual Practitioner.** The term “individual practitioner” means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted by the state in which he practices to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner. (7-1-93)

**03. Institutional Practitioner.** The term “institutional practitioner” means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted by the United States or the jurisdiction in which it practices to dispense a controlled substance in the course of professional practice, but does not include a pharmacy. (7-1-93)

**04. Laboratory.** The term “laboratory” means a laboratory approved by the Board and

entrusted with the custody and use of controlled substances for scientific and medical purposes and for purposes of instruction and administered by a person licensed by the state of Idaho to possess such substances. (7-1-93)

**05. Name.** The term “name” means the official name, common or usual name, chemical name, or brand name of a substance. (7-1-93)

**06. Official Idaho Register.** The term “Official Idaho Register” is defined as the official register issued by the Board that contains the required information to record the sales or disposition of Schedule V substances. The book shall be in duplicate bearing the notice to the public on the reverse side of the original sheet which is permanently bound in the book, and shall be retained for a period of two (2) years after the last dated entry. (7-1-93)

**07. Owner.** The term “owner” means any person having any right, title, or interest in a referenced vehicle. (7-1-93)

**08. Pharmacist.** The term “pharmacist” means any pharmacist licensed by a state to dispense controlled substances and includes any other person (for example, student pharmacist) authorized by a state to dispense controlled substances under the supervision of a licensed pharmacist. (7-1-93)

**09. Pharmacy.** The term “pharmacy” means every store or other place of business where prescriptions are compounded, dispensed, or sold by a pharmacist and where prescriptions drug orders for controlled substances are received or processed in accordance with federal law and the pharmacy laws and rules of this state. (7-1-93)( )

~~**10. Prescription.** The term “prescription” means a prescription for a controlled substance in Schedules III, IV, or V that is an oral order given individually for the person for whom prescribed directly from the prescriber or by the prescriber’s employee or agent to the pharmacist, or indirectly by means of an order written in ink, indelible pencil, typewritten, or a computer-generated hard copy signed by the prescriber, and contains the address of the prescriber, the prescriber’s federal registry number, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, and dated as of the date on which it is written. Written prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all respects to federal and state laws, regulations, and rules. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these rules. (4-11-06)~~

~~**110. Register, Registration.** The terms “register” and “registration” refer only to registration required and permitted by Section 37-2717, Idaho Code. (7-1-93)~~

~~**121. Registrant.** The term “registrant” means any person who is registered. (7-1-93)~~

~~**132. Readily Retrievable.** The term “readily retrievable” means that certain records are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time or records are kept on which certain items are asterisked, redlined, or in some other manner~~

visually identifiable apart from other items appearing on the records, or both. (7-1-93)

**143. Sale.** The term “sale” as used herein includes barter, exchange, gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee. (7-1-93)

**154. Transport.** The term “transport” with reference to controlled substances, includes “conceal,” “convey,” and “carry.” (7-1-93)

**165. Vehicle.** The term “vehicle” means any vehicle or equipment used for the transportation of persons or things. (7-1-93)

**176. Physician, Veterinarian, Dentist, Podiatrist, Osteopath, Optometrist, Pharmacist.** These titles or any similar designation, refer to persons who hold valid, unrevoked licenses to practice their respective professions in this state, issued by their respective examining boards. (12-7-94)

**187. Physician.** The term “physician” includes only persons licensed under Title 54, Chapter 18, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

442. ~~REQUIREMENT OF~~ **EMERGENCY** PRESCRIPTION **DRUG ORDER** - SCHEDULE II.

~~An emergency situation, as defined referenced in Section 37-2722(b), Idaho Code, a pharmacist may dispense a~~ **is one in which the prescriber determines: immediate administration of the controlled substance listed in is necessary for proper treatment of the intended ultimate user; and that no appropriate alternative treatment is available, including administration of a drug which is not a Schedule II upon receiving oral authorization of a prescribing individual practitioner controlled substance; and that it is not reasonably possible for the prescriber to provide a written prescription drug order to be presented to the person dispensing the substance prior to the dispensing.** (7-1-93)( )

**a01. Quantity Limited.** The quantity prescribed and dispensed ~~is~~ **must be** limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription **drug order** signed by the prescriber ~~individual practitioner~~). (7-1-93)( )

**b02. Prescription Drug Order Reduced to Writing.** The prescription ~~shall~~ **drug order must** be immediately reduced to writing by the pharmacist and ~~shall~~ **must** contain all of the information required in Section 37-2723, Idaho Code, except for the signature of the prescriber ~~individual practitioner~~. (7-1-93)( )

~~e. If the prescribing individual practitioner is not known to the pharmacist, he must make a reasonable effort to determine that the oral authorization came from a registered~~

~~individual practitioner, which may include a callback to the prescribing individual practitioner using his phone number as listed in the telephone directory or other good faith effort to ensure his identity, or both.~~ (7-1-93)

**d03. Written Prescription Drug Order.** Within seven (7) days after ~~authorizing issuing verbal authorization for the dispensing of~~ an emergency ~~oral~~ prescription ~~for a Schedule II controlled substance~~, the prescribing ~~er individual practitioner shall cause~~ **must provide** a written prescription **drug order** for the emergency quantity ~~prescribed to be delivered to the dispensing pharmacist.~~ In addition to conforming to the requirement of Section 37-2723, Idaho Code, the prescription ~~shall~~ **drug order must** have written on its face "Authorization for Emergency Dispensing" and the date ~~of the oral verbal prescription drug order was issued.~~ (7-1-99)( )

**e04. Delivery of Paper Prescription Drug Order** The ~~written paper~~ prescription **drug order** may be delivered ~~to the pharmacist in person or~~ by mail; ~~however, if delivered by mail, it must be~~ postmarked within the seven (7)-day period. (7-1-99)( )

**f05. Attachment of Paper Prescription Drug Order.** ~~Upon receipt, the dispensing pharmacist shall attach the written~~ **A paper prescription drug order must be attached** to the ~~oral verbal~~ emergency prescription **drug order** that ~~had was~~ previously ~~been~~ reduced to writing. **For electronic prescriptions, the pharmacist must annotate the record of the electronic prescription with the original authorization and date of the verbal order.** (7-1-93)( )

**g06. Notification to the Board.** The pharmacist ~~shall~~ **must** notify the Board if the prescribing ~~er individual practitioner~~ fails to ~~deliver~~ **provide** a written prescription ~~to him~~ **drug order within the seven (7)-day period.** ~~Failure of the pharmacist to so notify the Board shall void the prescribing individual practitioner's authority, conferred by this Subsection to dispense without a written prescription.~~ (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**444. PARTIAL-FILLING DISPENSING OF SCHEDULE II PRESCRIPTIONS.**

**01. Conditions for Partial-Fill Dispensing.** ~~The partial filling of a prescription for a controlled substance listed in A Schedule II is permissible if~~ **controlled substance prescription may be partially filled and dispensed when** the pharmacist is unable to supply the full quantity ~~called for in a written or emergency oral prescription and a notation is made of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription) ordered.~~ (7-1-93)( )

**01a. Remaining Portion of Prescription.** The remaining portion of the prescription may **only** be filled within ~~the~~ seventy-two (72) hours **period of the first partial filling; however, if the remaining portion is not or cannot be filled within seventy-two (72) hours,** the pharmacist ~~shall~~ **must** so notify the prescribing ~~er individual practitioner.~~ (7-1-93)( )

**02b. Supplying Further Quantity.** ~~No further quantity may~~ **Additional quantities must**

not be ~~supplied~~ dispensed after ~~the~~ seventy-two (72) hours ~~period~~ from the time the initial quantity was dispensed without a new prescription drug order. (7-1-93)( )

**032. Partial-Fill Quantities Dispensing to LTCF and Terminal Illness Patients.** A Schedule II controlled substance prescription ~~for a Schedule II controlled substance written~~ for a patient in a Long Term Care Facility (LTCF) or for a patient with a ~~medical diagnosis~~ documenting ~~a~~ terminal illness may be filled in partial quantities ~~to include~~ and individual dosage units. ( )

**a.** If there is any question as to whether a patient may be classified as having a terminal illness, the pharmacist must contact the prescriber prior to partially filling the prescription. Both the pharmacist and the prescriber have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient. ( )

**b.** The pharmacist must record ~~on that~~ the ~~prescription whether the~~ patient is either “terminally ill” or an “LTCF patient.” (7-1-99)( )

**03. Partial-Fill Documentation.** For each ~~partial filling, the dispensing pharmacist shall record on the back of the~~ partially filled prescription ~~(or on another appropriate record, uniformly maintained and readily retrievable)~~ dispensed, the following information must be recorded: ( )

**a.** ~~The date of the partial filling;~~ ( )

**b.** The quantity dispensed; ( )

**c.** The remaining quantity authorized to be for dispensed; and ( )

**d.** ~~The identification of the dispensing pharmacist.~~ (7-1-99)( )

~~Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed sixty (60) days from the issue date, unless sooner terminated by the discontinuance of medication.~~ (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

**446. ~~REQUIREMENT OF PRESCRIPTION—SCHEDULE III OR IV~~ PRESCRIBER ADMINISTRATION AND DELIVERY OF CONTROLLED SUBSTANCES.**

An authorized prescriber may administer or deliver a controlled substance listed in Schedules II, III, IV, or V in the course of the prescriber’s professional practice, pursuant to the inventory and recordkeeping requirements of federal law; Section 37-2720, Idaho Code; and these rules. ( )

**01. ~~Dispensing a Controlled Substance—Pharmacist.~~** ~~A pharmacist may dispense a controlled substance listed in Schedule III or IV, that is a prescription drug as determined under the federal Food, Drug, and Cosmetic Act, only pursuant to either a written prescription signed~~



~~by a prescribing individual practitioner or an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist containing all information required in Section 37-2722(c), Idaho Code, except for the signature of the prescribing individual practitioner. (7-1-93)~~

~~**02. Dispensing a Controlled Substance—Individual Practitioner.** An individual practitioner may administer or dispense a controlled substance listed in Schedule III or IV in the course of his professional practice without a prescription, subject to Section 37-2720, Idaho Code. (7-1-93)~~

~~**03. Dispensing a Controlled Substance—Institutional Practitioner.** An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule III or IV pursuant to a written prescription signed by a prescribing individual practitioner, pursuant to an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist (containing all of the information required in Section 37-2723, Idaho Code, except for the signature of the prescribing individual practitioner), or pursuant to an order for medication made by an individual practitioner that is dispensed for immediate administration to the ultimate user subject to Section 37-2720, Idaho Code. (7-1-93)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. REQUIREMENT OF PRESCRIPTION—SCHEDULE V RESERVED.**

~~**01. Dispensing Schedule V Controlled Substances.** A pharmacist may dispense a controlled substance listed in Schedule V pursuant to a prescription as required for controlled substances listed in Schedule III and IV in Section 451 of these rules. (7-1-93)~~

~~**02. Refilling Schedule V Controlled Substances Requires Authorization.** A prescription for a controlled substance listed in Schedule V may be refilled only as expressly authorized by the prescribing individual practitioner on the prescription. If no such authorization is given, the prescription may not be refilled. (7-1-93)~~

~~**03. Labeling Schedule V Controlled Substances for Dispensing.** A pharmacist dispensing a Schedule V substance pursuant to a prescription shall label the substance in accordance with Section 448 of these rules and file the prescription in accordance with Section 449 of these rules. (7-1-93)~~

~~**04. Dispensing Schedule V Controlled Substances by Individual Practitioner.** An individual practitioner may administer or dispense a controlled substance listed in Schedule V in the course of his professional practice without a prescription, subject to Section 37-2720, Idaho Code. (7-1-93)~~

~~**05. Dispensing Schedule V Controlled Substances by Institutional Practitioner.** An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule V only pursuant to a written prescription signed by the prescribing~~

~~individual practitioner, pursuant to an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist (containing all information required in Section 37-2723, Idaho Code, except for the signature of the prescribing individual practitioner), or pursuant to an order for medication made by an individual practitioner that is dispensed for immediate administration to the ultimate user subject to Section 37-2720, Idaho Code.~~ (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**496. CONTROLLED SUBSTANCE INVENTORIES, PREScription DRUG ORDERS, AND RECORDS.**

Each ~~registered pharmacy shall~~ controlled substance registrant must maintain the prescription drug orders, inventories, and records of controlled substances as follows: (7-1-93)( )

**01. Inventories and Records for Schedules I and II. Prescription drug orders,** ~~inventories,~~ and records of ~~all~~ controlled substances listed in Schedules I and II ~~shall~~ must be maintained separately from ~~all~~ other prescription drug orders and records of the pharmacy, ~~and prescriptions for Schedule I and II substances shall be maintained in a separate prescription file.~~ (7-1-93)( )

**02. Inventories and Records for Schedules III, IV, and V. Prescription drug orders,** ~~inventories,~~ and records of controlled substances listed in Schedules III, IV, and V ~~shall~~ must be maintained ~~either~~ separately from ~~all~~ other prescription drug orders and records ~~of the pharmacy or in such form manner that the information required is readily retrievable from ordinary business records of the pharmacy. Prescriptions for such substances shall be maintained either in a separate prescription file for controlled substances listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescription records of the pharmacy.~~ (7-1-93)( )

**03. Readily Retrievable Paper Prescription Drug Orders. Controlled substance** ~~Prescriptions will be deemed~~ drug orders, inventories, and records are considered readily retrievable if, ~~at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one (1) inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for non-controlled substances, except that for pharmacies employing~~ stored in an electronic recordkeeping or an alternative system ~~for prescriptions that permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, the requirement to mark the hard copy prescription with a red "C" is waived~~ in such a manner that they can be separated from all other records in a reasonable time or if they are made in some manner visually identifiable and distinguished from other records or from other items appearing on the records. Electronic prescription drug order records must be maintained in compliance with applicable federal law. (7-1-99)( )

**04. Annual Inventory of Stocks of Controlled Substances.** Each ~~registered~~

~~pharmacy shall annually, within seven (7) days of the prior year's inventory, take~~ **controlled substance registrant must conduct** an inventory of all stocks of controlled substances ~~on hand, following at least annually in a form and manner that satisfies~~ the **general inventory** requirements ~~for inventories of federal law, regulations, and these rules.~~ (5-8-09)( )

**a.** ~~The annual inventory, required in these rules, shall be a written record resulting~~ **Inventories of controlled substances required by these rules must result** from a physical (or actual) count of stock on hand or in the control of the ~~pharmacist-in-charge of a particular pharmacy registrant.~~ (7-1-93)( )

**b.** ~~Automated data processing equipment~~ **An electronic recordkeeping system** may be used to ~~provide lists of items (products) and to~~ record receipts and ~~issues~~ **distributions** of ~~various items, but not~~ **controlled substances** and to ~~produce~~ **record** the annual inventory **if the inventory is also maintained in a written, typewritten, or printed form at the registered location.** (7-1-93)( )

~~c.~~ ~~The record of inventory shall be kept in the inventory book provided by the Board or in another bound book (not loose leaf) suitable to meet the needs of inventory reports.~~ (7-1-93)

~~d.~~ Upon completion, the inventory ~~will~~ **must** be dated as of the day ~~taken~~ **conducted**, ~~indicating~~ **noted as to** whether it was ~~taken~~ **conducted** at the opening or closing of business, and signed by the party that ~~took~~ **completed** the inventory. (7-1-93)( )

**d.** **Complete inventories conducted as otherwise required by these rules may also be considered in complying with the annual inventory requirement.** ( )

**05. Separate Inventories for Each Location.** A separate inventory ~~shall~~ **must** be ~~made by a registrant for~~ **conducted and maintained at** each registered location ~~and shall be kept at the registered location.~~ (7-1-93)( )

**06. Inventory ~~Must Be In Written Form~~ on Change of Pharmacist-in-Charge (PIC).** ~~An~~ **complete controlled substance** inventory must be ~~maintained in a written, typewritten or printed form. If taken by use of an oral recording device it must be promptly transcribed~~ **conducted in the event of a PIC change. The inventory must be conducted following the close of business on the last day of employment of the outgoing PIC and prior to opening for business on the first day of employment of the incoming PIC. However, a single inventory is sufficient if there is no lapse of employment between the outgoing and the incoming PICs.** (7-1-93)( )

~~07. Maintaining Written Inventory. Such inventory must be maintained on the premises for a minimum of three (3) years.~~ (7-1-93)

**07. Inventory on Discovery of Theft or Loss of Controlled Substances.** A complete controlled substance inventory must be conducted within forty-eight (48) hours of the discovery of a theft or reportable loss of a controlled substance. ( )

**08. Inventory on Additions to Schedules of Controlled Substances.** On the effective date of ~~a rule adding~~ **an addition of** a substance to ~~any~~ schedule of controlled substances, ~~which substance was, immediately prior to that date, not listed on a schedule,~~ every registrant ~~required to keep records~~ who possesses that substance ~~shall take~~ **must conduct** an inventory of all

stocks of the substance on hand, and thereafter, ~~such substance shall be~~ included the substance in each inventory ~~made~~ conducted by the registrant ~~pursuant to Subsection 496.04 of these rules.~~  
(7-1-93)( )

**09. Maintaining Current List Record of Each Substance.** Each ~~registered pharmacy~~ shall controlled substance registrant must maintain a current, complete, and ~~current list~~ accurate record of each substance manufactured, imported, received, ordered, sold, delivered, exported, or otherwise disposed of by the ~~pharmacy; order forms; and other required records~~ registrant in ~~such a manner as to be~~ readily retrievable manner, except that a registrant is not required by this rule to maintain a perpetual inventory.  
(7-1-93)( )

**10. Maintaining Inventories.** Inventories must be maintained on the registered premises for a minimum of three (3) years. ( )

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1002

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 37-2715, Idaho Code.

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

**Public comment has resulted in changes to the definitions, record keeping requirements, and medication to be administered in the event of an emergency resulting from the administration of a vaccine.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 436 through 438.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

DATED this 1<sup>st</sup> day of November, 2010.

Mark Johnston, R.Ph., Executive Director  
Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720, Boise, ID 83720-0067  
Phone: (208) 334-2356 / Fax: (208) 334-3536

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 37-2715, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

**Training and recordkeeping requirements for pharmacists administering immunizations are needed to protect the health and welfare of the citizens of Idaho. The proposed rule would establish qualifications for pharmacists to immunize and establish recordkeeping requirements.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was held with the Idaho Pharmacy Leadership Counsel, whose members include the Idaho State Pharmacy Association, the Idaho Society of Health-Systems Pharmacists, and Idaho State University's School of Pharmacy.

**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 Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27,

2010.

DATED this 27th day of August, 2010.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1002**

**166. IMMUNIZATION RECORD.**

**01. Definitions.** ( )

**a.** “Absolute Contraindication” means a situation that makes a particular treatment or procedure inadvisable. ( )

**b.** ACPE means the Accreditation Council for Pharmacy Education. ( )

**c.** AED means automated electronic defibrillator. ( )

**d.** AHA means American Heart Association. ( )

**e.** CDC means the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. ( )

**f.** “Compromised Patient” means an individual who may have an absolute or relative contraindication to receive immunizations. ( )

**g.** CPR means cardiopulmonary resuscitation. ( )

**h.** “Healthy Patient” means an individual with no contraindications to receive immunizations. ( )

**i.** IRIS means the Idaho Immunization Reminder Information System. ( )

**j.** “Relative Contraindication” means a condition that makes a particular treatment or procedure somewhat inadvisable but does not rule it out. ( )

**k.** VAERS means Vaccine Adverse Event Reporting System. ( )

**02. Qualifications.** ( )

**a.** A pharmacist may administer immunizations to healthy patients, and pursuant to a prescription drug order to compromised patients. ( )

**b.** To qualify to administer immunizations, a pharmacist must first; ( )

i. Successfully complete an ACPE accredited or comparable course that meets the standards for pediatric, adolescent, and adult immunization practices recommended and approved by the CDC's Advisory Committee on Immunization Practices and includes at least; ( )

(1) Basic immunology, vaccine and immunization protection; ( )

(2) Diseases that are preventable through vaccination and immunization; ( )

(3) Recommended immunization schedules; ( )

(3) Current recommended immunization schedules; ( )

(4) Vaccine and immunization storage and management; ( )

(5) Informed consent; ( )

(6) Physiology and techniques for administration of immunizations; ( )

(7) Pre-immunization and post-immunization assessment and counseling; ( )

(8) Immunization reporting and records management; and ( )

(9) Identification, response, documentation, and reporting of adverse events. ( )

ii. Hold a current certification in basic life support for healthcare providers (CPR and AED program) offered by AHA or any nationally recognized training program that follows AHA guidelines for said healthcare provider certification that includes AED training and requires hands-on skills assessment by an authorized instructor; ( )

c. Pharmacists qualified to administer immunizations must also annually complete a minimum of one (1) hour of ACPE approved continuing education related to vaccines, immunizations, or their administration within the continuing education required by Section 134 of these rules. ( )

d. The authority to administer immunizations may not be delegated; however, a registered student pharmacist that has satisfied the immunizing pharmacist qualifications may administer immunizations under the direct supervision of a qualified immunizing pharmacist. ( )

e. An immunizing pharmacist must maintain written policies and procedures for disposal of used or contaminated supplies. ( )

f. An immunizing pharmacist must report; ( )

i. Any adverse events to the health care provider identified by the patient, if any, and to the VAERS. ( )

ii. Any applicable immunization to IRIS. ( )



**03. Immunization Administration.** Immunizations must be administered pursuant to the latest recommendations issued by the CDC or other qualified government authorities. A pharmacist must have a current copy of, or on-site access to, the CDC's "Epidemiology and Prevention of Vaccine-Preventable Diseases." ( )

**04. Vaccine Information Statement.** A current CDC-issued Vaccine Information Statement corresponding to the vaccine administered must be provided to the patient or the patient's representative for each immunization administered. ( )

**05. Recordkeeping.** For each immunization administered, the following information must be maintained in the patient profile: ( )

- a.** The name, address, allergies, and date of birth of the patient; ( )
- b.** The date of administration; ( )
- c.** The *product* name, manufacturer, dose, lot number, and expiration date of the vaccine; ( )
- d.** Documentation identifying the Vaccine Information Statement provided; ( )
- e.** The site and route of administration *and the dose in series, if applicable*; ( )
- f.** The name of the patient's health care provider, if any; ( )
- g.** The names of the immunizing pharmacist and student pharmacist, *if any*; ( )
- h.** Any adverse events encountered; ( )
- i.** The date on which an adverse event was reported to the patient's health care provider, if any; *and* ( )
- j.** *Completed informed consent forms.* ( )

**06. Emergencies.** ( )

**a.** An immunizing pharmacist must maintain a immediately-retrievable emergency kit sufficiently stocked to manage an acute allergic reaction to an immunization. ( )

**b.** An immunizing pharmacist may initiate and administer auto-inject epinephrine, *injectable diphenhydramine, or oral diphenhydramine* to treat an acute allergic reaction to an immunization pursuant to guidelines issued by the American Pharmacy Association (APhA). ( )

**1667. -- 175. (RESERVED).**

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1003

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 37-2715, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, page 439.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

DATED this 28<sup>th</sup> day of October, 2010.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 37-2715, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

**Rule 358 (IDAPA 27.01.01.358) needs to be stricken because it is in conflict with the Idaho Wholesale Drug Distribution Act, Sections 54-1752(16) and 54-1753, Idaho Code. The proposed change strikes Rule 358 in its entirety because it is in conflict with the Idaho Wholesale Drug Distribution Act.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Idaho Wholesale Drug Distribution Act prohibits the acts allowed by this rule. Interested parties were notified in writing that they would need to initiate a proposed change to Idaho Code in order to continue the acts detailed in this rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27,

2010.

DATED this 27th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1003***

**358. ~~DISTRIBUTION RESERVED.~~**

~~Wholesale distribution of legend drugs will be permitted only to registered veterinarians or other licensed retail veterinary drug outlets. (7-1-93)~~

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1004

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 37-2715, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 440 and 441.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

DATED this 28<sup>th</sup> day of October, 2010.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 37-2715, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 proposed rule is necessary to include information on controlled substances delivered by practitioners in the controlled substances prescriptions database maintained by the Board pursuant to Sections 37-2726 and 37-2730(A), Idaho Code. This information is not currently captured in the database and should be included in order to protect the health and welfare of the citizens of Idaho. The proposed rule would mandate that prescribers who deliver controlled substances to ultimate users would have to report certain data to the Board, just as dispensing pharmacies are required to do currently.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted as the need for this rule was not apparent until such time that negotiated rulemaking was infeasible; however, informal negotiated rulemaking is scheduled with entities, including the Idaho Board of Medicine, before the public comment period ends, allowing for potential changes before the rule becomes pending.

**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 Mark

Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1004***

**469. PRESCRIPTION DRUG ORDER REPORTING.**

Certain data on all controlled substances must be reported weekly or more often as required by the Board by Aall pharmacies ~~that~~ holding a DEA retail pharmacy registration ~~will report certain data on all Schedule II, III, IV, and V~~ that dispense controlled substances, ~~prescriptions filled, as required by the Board, by the first of every month or more often, as directed by the Board and by practitioners that deliver controlled substances.~~ The data may be reported in the form of diskette, direct computer link, magnetic tape or other method approved by the Board. Data on controlled substance prescription drug samples does not need to be reported. (5-8-09)(\_\_\_\_)

## **IDAPA 41 - PUBLIC HEALTH DISTRICTS**

### **41.03.01 - RULES OF THE SOUTHWEST DISTRICT HEALTH DEPARTMENT**

#### **DOCKET NO. 41-0301-1001 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-416, Idaho Code.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, page 444.](#)**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact David M. Loper, Environmental Health Director, Southwest District Health, 208.455.5401.

DATED this 15<sup>th</sup> day of October, 2010.

Bruce Krosch, Director  
Southwest District Health  
920 Main Street  
Caldwell, ID 83605  
phone: 208.455.5315  
fax: 208.454.7722

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



**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-416, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 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:

**This rulemaking is being done to repeal IDAPA 41.03.01, "Rules of the Southwest District Health Department," because this rule is outdated and is no longer being used by the Department.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees or charges being imposed through this rulemaking.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to repeal IDAPA 41.03.01 which is outdated and no longer being used. The proposed rulemaking is not anticipated to have interested stakeholders, thus negotiated rulemaking is not necessary.

**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: There are no documents being incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David M. Loper, REHS/RS, Director, Environmental Health Services, Southwest District Health, (208) 455-4501. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 30, 2010.

DATED this 29th day of July, 2010.

**IDAPA 41.03.01 IS BEING REPEALED IN ITS ENTIRETY**

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0904

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 4, 2010, Vol. 10-8, pages 101 through 138. After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/air/58\\_0101\\_0904\\_pending.cfm](http://www.deq.idaho.gov/rules/air/58_0101_0904_pending.cfm) or by contacting the undersigned.

#### IDAHO CODE SECTION 39-107D STATEMENT:

*(1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under chapter 52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.*

The rule is not more stringent than federal law. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, incorporate U.S. EPA regulations that address mercury. See IDAPA 58.01.107.03.i. Sources within a source category subject to regulation under federal mercury rules are specifically exempt from this rule. See IDAPA 58.01.01.215.01 and 401.02.b (proposed rule). Thus, the rule does not propose a more stringent standard, emission limit or control technology requirement than specifically prescribed by the federal Clean Air Act or the U.S. EPA. The rule does address mercury emissions from sources whose mercury emissions are not regulated under federal law. It requires that best available control technology be installed on new or modified sources with the potential to emit mercury, or existing sources with actual emissions of mercury, at certain threshold levels. An argument could be made that the rule is broader in scope than federal law, as it does regulate an activity not regulated by federal law.

*(2) To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize:*

*(a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and*

Mercury is widely recognized as a toxic element with significant health effects (particularly neurological effects on developing fetuses). (Clarkston 2006, EPA 2001, EPA 2009) It has been recognized as a hazardous air pollutant by Congress (under the Clean Air Act) and EPA. Regulations have been promulgated at the federal and state level to minimize mercury emissions. (EPA 2005b, NDEP 2006, DNR 2008) Deposition of mercury air emissions can eventually lead to bio-accumulation of mercury (as methylmercury) in fish which can lead to human exposure from fish consumption. (Mason, 1995)

*(b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.*

Idaho DEQ has collected data in order to characterize the extent of mercury contamination throughout Idaho. (DEQ 2007b, DEQ 2008, DEQ 2009). All data collection events have followed a Quality Assurance Project Plan. The fish sampling performed by IDEQ has resulted in 19 fish advisories across the state.

*(3) Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:*

*(a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects; and*

The population at risk are those who eat fish caught in the state of Idaho. Of particular concern are women of childbearing age, those pregnant, planning to become pregnant, or nursing; and children under the age of 15. (IFCAP 2009) There is also an ecological risk to fish and other species that eat fish.

*(b) Identification of the expected risk or central estimate of risk for the specific population or receptor; and*

The expected risk from mercury exposure are neurological. This is consistent with recent federal and other state analyses. Several studies have been performed that evaluate the IQ decrements among kids of fish eating populations.

*(c) Identification of each appropriate upper bound or lower bound estimate of risk; and*

A person's risk depends on a number factors including: the amount of Idaho fish consumed, the size of the fish, and the source of the fish. (IFCAP 2009) There is also risk from eating non-Idaho fish including store-bought fish.

*(d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and*

There are three major studies that have documented the health outcomes from eating fish contaminated with methyl mercury. Two of them (Faroe Islands and New Zealand) document evidence of in utero neurological impacts from low level exposures to methyl mercury. (Grandjean 1997, Crump 1998) Another study from the Seychelles does not support this conclusion. (Myers 2003) The National Research Council believes that when all of the data is considered there is still enough evidence to minimize low-level exposure to methyl mercury. (Stern 2004) This is the position taken by EPA when they promulgated CAMR and when they developed an oral reference dose for mercury. (EPA 2005b, EPA 2009) There have also been recent articles that discuss the mitigation of the neurological effects of mercury by selenium. This is an area of active research and no scientific consensus has been determined. (Peterson 2009)

DEQ acknowledges that one cannot technologically conclude that a specific reduction of mercury emissions from a local source will result in a specific reduction of mercury in Idaho's fish. This rule constitutes Idaho's best effort to ensure that significant sources of mercury emissions employ the best available control measures. As a result, the state can conclude it is doing its best to reduce its impact on the global pool of mercury emissions, which do in fact impact Idaho's resources.

*(e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.*

The studies known to DEQ are listed above. See response to (d) above.

**FISCAL IMPACT STATEMENT:** 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 when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov).

Dated this 7th day of October, 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](mailto:Paula.wilson@deq.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 19, 2010. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) has initiated this rulemaking in response to a Petition for Initiation of Rulemaking filed by Idaho Conservation League (ICL) and P4 Production, LLC (P4). In the petition, ICL and P4 requested that the Board of Environmental Quality direct DEQ to initiate negotiated rulemaking to solicit public comment and involvement in developing air quality rules designed to limit and control mercury emissions from certain facilities. The petition was granted by the Board on July 29, 2009.

By August 11, 2010, a “white paper” providing assistance in understanding and achieving compliance with the requirements of these rules is available for review and may be obtained at [http://www.deq.idaho.gov/rules/air/58\\_0101\\_0904\\_proposed.cfm](http://www.deq.idaho.gov/rules/air/58_0101_0904_proposed.cfm) or by contacting the undersigned.

Members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2010 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon adjournment of the 2011 legislative session if adopted by the Board and approved by the Legislature.

**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

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815.

On October 7, 2009, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 09-10, page 496](#), and a preliminary draft negotiated rule was made available for public review. Meetings were held on October 28, 2009, January 6, 2010, April 29, 2010, and June 10, 2010. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written comments received, and documents distributed during the negotiated rulemaking process is available at [http://www.deq.idaho.gov/rules/air/58\\_0101\\_0904\\_proposed.cfm](http://www.deq.idaho.gov/rules/air/58_0101_0904_proposed.cfm).

**IDAHO CODE SECTION 39-107D STATEMENT:** *(1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under [chapter 52, title 67, Idaho Code](#), must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.*

The proposed rule is not more stringent than federal law. IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho,” incorporates U.S. EPA regulations that address mercury. See IDAPA 58.01.107.03.i. Sources within a source category subject to regulation under federal mercury rules are specifically exempt from this proposed rule. See IDAPA 58.01.01.215.01 and 401.02.b. (proposed rule). Thus, the proposed rule does not propose a more stringent standard, emission limit or control technology requirement than specifically prescribed by the federal Clean Air Act or the U.S. EPA. The proposed rule does address mercury emissions from sources whose mercury emissions are not regulated under federal law. It requires that best available control technology be installed on new or modified sources with the potential to emit mercury, or existing sources with actual emissions of mercury, at certain threshold levels. An argument could be made that the proposed rule is broader in scope than federal law, as it does regulate an activity not regulated by federal law.

*(2) To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize:*

*(a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and*

Mercury is widely recognized as a toxic element with significant health effects (particularly neurological effects on developing fetuses) (Clarkston 2006, EPA 2001, EPA 2009). It has been recognized as a hazardous air pollutant by Congress (under the Clean Air Act) and EPA. Regulations have been promulgated at the federal and state level to minimize mercury emissions. (EPA 2005b, NDEP 2006, DNR 2008) Deposition of mercury air emissions can eventually lead to bio-accumulation of mercury (as methylmercury) in fish which can lead to human exposure from fish consumption. (Mason, 1995)

*(b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.*

Idaho DEQ has collected data in order to characterize the extent of mercury contamination throughout Idaho. (DEQ 2007b, DEQ 2008, DEQ 2009). All data collection events have followed a Quality Assurance Project Plan. The fish sampling performed by IDEQ has resulted in 19 fish advisories across the state.

*(3) Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under [chapter 52, title 67, Idaho Code](#), the following additional information:*

*(a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects; and*

The population at risk are those who eat fish caught in the state of Idaho. Of particular concern are women of childbearing age, those pregnant, planning to become pregnant, or nursing; and children under the age of 15. (IFCAP 2009) There is also an ecological risk to fish and other species that eat fish.

*(b) Identification of the expected risk or central estimate of risk for the specific population or receptor; and*

The expected risk from mercury exposure are neurological. This is consistent with recent federal and other state analyses. Several studies have been performed that evaluate the IQ decrements among kids of fish eating populations.

*(c) Identification of each appropriate upper bound or lower bound estimate of risk; and*

A person's risk depends on a number factors including: the amount of Idaho fish consumed, the size of the fish, and the source of the fish. (IFCAP 2009) There is also risk from eating non-Idaho fish including store-bought fish.

*(d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and*

There are three major studies that have documented the health outcomes from eating fish contaminated with methyl mercury. Two of them (Faroe Islands and New Zealand) document evidence of in utero neurological impacts from low level exposures to methyl mercury. (Grandjean 1997, Crump 1998) Another study from the Seychelles does not support this conclusion. (Myers 2003) The National Research Council believes that when all of the data is considered there is still enough evidence to minimize low-level exposure to methyl mercury. (Stern 2004) This is the position taken by EPA when they promulgated CAMR and when they developed an oral reference dose for mercury. (EPA 2005b, EPA 2009) There have also been recent articles that discuss the mitigation of the neurological effects of mercury by selenium. This is an area of active research and no scientific consensus has been determined. (Peterson 2009)

DEQ acknowledges that one cannot technologically conclude that a specific reduction of mercury emissions from a local source will result in a specific reduction of mercury in Idaho's fish. This proposed rule constitutes Idaho's best effort to ensure that significant sources of mercury emissions employ the best available control measures. As a result, the state can conclude it is doing its best to reduce its impact on the global pool of mercury emissions, which do in fact impact Idaho's resources.

*(e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.*

The studies known to DEQ are listed above. See response to (d) above.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov).

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 1, 2010.

DATED this 6th day of July, 2010.

***THE FOLLOWING IS THE PENDING TEXT FOR DOCKET NO. 58-0101-0904***

**006. GENERAL DEFINITIONS.**

**01. Accountable.** Any SIP emission trading program must account for the aggregate effect of the emissions trades in the demonstration of reasonable further progress, attainment, or maintenance. (4-5-00)

**02. Act.** The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). (5-1-94)

**03. Actual Emissions.** The actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following: (4-5-00)

**a.** In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more



representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. (4-5-00)

**b.** The Department may presume that the source-specific allowable emissions for the unit are equivalent to actual emissions of the unit. (4-5-00)

**c.** For any emissions unit (other than an electric utility steam generating unit as specified below) which has not yet begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. (4-5-00)

**d.** For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Department, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years may be required by the Department if it determines such a period to be more representative of normal source post-change operations. (4-5-00)

**04. Adverse Impact on Visibility.** Visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I Area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with: (3-30-07)

**a.** Times of visitor use of the Federal Class I Area; and (3-30-07)

**b.** The frequency and timing of natural conditions that reduce visibility. (3-30-07)

**c.** This term does not include affects on integral vistas when applied to 40 CFR 51.307. (3-30-07)

**05. Air Pollutant/Air Contaminant.** Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof. (4-5-00)

**06. Air Pollution.** The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (4-5-00)

**07. Air Quality.** The specific measurement in the ambient air of a particular air pollutant at any given time. (5-1-94)

**08. Air Quality Criterion.** The information used as guidelines for decisions when establishing air quality goals and air quality standards. (5-1-94)

**09. Allowable Emissions.** The allowable emissions rate of a stationary source or facility calculated using the maximum rated capacity of the source or facility (unless the source or facility is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: (4-5-00)

- a.** The applicable standards set forth in 40 CFR part 60 and 61; (4-5-00)
- b.** Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or (4-5-00)
- c.** The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date. (4-5-00)

**10. Ambient Air.** That portion of the atmosphere, external to buildings, to which the general public has access. (5-1-94)

**11. Ambient Air Quality Violation.** Any ambient concentration that causes or contributes to an exceedance of a national ambient air quality standard as determined by 40 CFR Part 50. (4-11-06)

**12. Atmospheric Stagnation Advisory.** An air pollution alert declared by the Department when air pollutant impacts have been observed and/or meteorological conditions are conducive to additional air pollutant buildup. (4-11-06)

**13. Attainment Area.** Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular air pollutant or air pollutants. (4-11-06)

**14. BART-Eligible Source.** Any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit two hundred fifty (250) tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. (3-30-07)

- a.** Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)
- b.** Coal cleaning plants (thermal dryers); (3-30-07)
- c.** Kraft pulp mills; (3-30-07)
- d.** Portland cement plants; (3-30-07)
- e.** Primary zinc smelters; (3-30-07)
- f.** Iron and steel mill plants; (3-30-07)
- g.** Primary aluminum ore reduction plants; (3-30-07)

- h.** Primary copper smelters; (3-30-07)
- i.** Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day; (3-30-07)
- j.** Hydrofluoric, sulfuric, and nitric acid plants; (3-30-07)
- k.** Petroleum refineries; (3-30-07)
- l.** Lime plants; (3-30-07)
- m.** Phosphate rock processing plants; (3-30-07)
- n.** Coke oven batteries; (3-30-07)
- o.** Sulfur recovery plants; (3-30-07)
- p.** Carbon black plants (furnace process); (3-30-07)
- q.** Primary lead smelters; (3-30-07)
- r.** Fuel conversion plants; (3-30-07)
- s.** Sintering plants; (3-30-07)
- t.** Secondary metal production facilities; (3-30-07)
- u.** Chemical process plants; (3-30-07)
- v.** Fossil-fuel boilers of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)
- w.** Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (3-30-07)
- x.** Taconite ore processing facilities; (3-30-07)
- y.** Glass fiber processing plants; and (3-30-07)
- z.** Charcoal production facilities. (3-30-07)
- 15. Baseline (Area, Concentration, Date).** See Section 579. (5-1-94)
- 16. Best Available Retrofit Technology (BART).** Means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into

consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. (3-30-07)

17. **Board.** Idaho Board of Environmental Quality. (5-1-94)
18. **Breakdown.** An unplanned failure of any equipment or emissions unit which may cause excess emissions. (4-5-00)
19. **BTU.** British thermal unit. (5-1-94)
20. **Clean Air Act.** The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
21. **Collection Efficiency.** The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
22. **Commence Construction or Modification.** In general, this means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. (4-5-00)
23. **Complete.** A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
24. **Construction.** Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
25. **Control Equipment.** Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)
26. **Controlled Emission.** An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)
27. **Criteria Air Pollutant.** Any of the following: PM-10; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; lead. (4-5-00)
28. **Deciview.** A measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview Haze Index =  $10 \ln_e (b_{\text{ext}} / 10 \text{Mm}^{-1})$  where  $b_{\text{ext}}$  = the atmospheric light extinction coefficient, expressed in inverse megameters ( $\text{Mm}^{-1}$ ). (3-30-07)

- 29. Department.** The Department of Environmental Quality. (5-1-94)
- 30. Designated Facility.** Any of the following facilities: (5-1-94)
- a.** Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)
  - b.** Coal cleaning plants (thermal dryers); (5-1-94)
  - c.** Kraft pulp mills; (5-1-94)
  - d.** Portland cement plants; (5-1-94)
  - e.** Primary zinc smelters; (5-1-94)
  - f.** Iron and steel mill plants; (5-1-94)
  - g.** Primary aluminum ore reduction plants; (5-1-94)
  - h.** Primary copper smelters; (5-1-94)
  - i.** Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)
  - j.** Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)
  - k.** Petroleum refineries; (5-1-94)
  - l.** Lime plants; (5-1-94)
  - m.** Phosphate rock processing plants; (5-1-94)
  - n.** Coke oven batteries; (5-1-94)
  - o.** Sulfur recovery plants; (5-1-94)
  - p.** Carbon black plants (furnace process); (5-1-94)
  - q.** Primary lead smelters; (5-1-94)
  - r.** Fuel conversion plants; (5-1-94)
  - s.** Sintering plants; (5-1-94)
  - t.** Secondary metal production facilities; (5-1-94)
  - u.** Chemical process plants; (5-1-94)

v. Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)

w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)

x. Taconite ore processing facilities; (5-1-94)

y. Glass fiber processing plants; and (5-1-94)

z. Charcoal production facilities. (5-1-94)

**31. Director.** The Director of the Department of Environmental Quality or his designee. (5-1-94)

**32. Effective Dose Equivalent.** The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)

**33. Emission.** Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)

**34. Emission Standard.** A permit or regulatory requirement established by the Department or EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction. (4-5-00)

**35. Emissions Unit.** An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term "unit" for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)

**36. EPA.** The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)

**37. Environmental Remediation Source.** A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five (5) years or less of total operation. (5-1-95)

**38. Excess Emissions.** Emissions that exceed an applicable emissions standard

established for any facility, source or emissions unit by statute, regulation, rule, permit, or order. (4-11-06)

**39. Existing Stationary Source or Facility.** Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)

**40. Facility.** All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)

**41. Federal Class I Area.** Any federal land that is classified or reclassified "Class I." (3-30-07)

**42. Federal Land Manager.** The Secretary of the department with authority over the Federal Class I Area (or the Secretary's designee). (3-30-07)

**43. Federally Enforceable.** All limitations and conditions which are enforceable by EPA and the Department under the Clean Air Act, including those requirements developed pursuant to 40 CFR Parts 60 and 61 requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, 60, or 63. (3-30-07)

**44. Fire Hazard.** The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)

**45. Fuel-Burning Equipment.** Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)

**46. Fugitive Dust.** Fugitive emissions composed of particulate matter. (5-1-94)

**47. Fugitive Emissions.** Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)

**48. Garbage.** Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)

**49. Gasoline.** Any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. Gasoline also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does

not include special fuels. (3-29-10)

**50. Gasoline Cargo Tank.** Any tank or trailer used for the transport of gasoline from sources of supply to underground gasoline storage tanks. (3-29-10)

**51. Gasoline Dispensing Facility (GDF).** Any facility with underground gasoline storage tanks used for dispensing gasoline. (3-29-10)

**52. Grain Elevator.** Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)

**53. Grain Storage Elevator.** Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of thirty five thousand two hundred (35,200) cubic meters (ca. 1 million bushels). (5-1-94)

**54. Grain Terminal Elevator.** Any grain elevator which has a permanent storage capacity of more than eighty-eight thousand one hundred (88,100) cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)

**55. Hazardous Air Pollutant (HAP).** Any air pollutant listed pursuant to Section 112(b) of the Clean Air Act. Hazardous Air Pollutants are regulated air pollutants. (4-11-06)

**56. Hazardous Waste.** Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may: (5-1-94)

**a.** Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or (5-1-94)

**b.** Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). (5-1-94)

**57. Hot-Mix Asphalt Plant.** Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. (5-1-94)

**58. Incinerator.** Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open Burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by



burning in a flare stack shall be considered incineration. (5-1-94)

**59. Indian Governing Body.** The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government. (5-1-94)

**60. Integral Vista.** A view perceived from within the mandatory Class I Federal Area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal Area. (3-30-07)

**61. Kraft Pulping.** Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. (5-1-94)

**62. Least Impaired Days.** The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the lowest amount of visibility impairment. (3-30-07)

**63. Lowest Achievable Emission Rate (LAER).** For any source, the more stringent rate of emissions based on the following: (4-5-00)

**a.** The most stringent emissions limitation which is contained in any State Implementation Plan for such class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or (4-5-00)

**b.** The most stringent emissions limitation which is achieved in practice by such class or category of facilities. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the facility. In no event shall the application of the term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance. (4-5-00)

**64. Mandatory Class I Federal Area.** Any area identified in 40 CFR 81.400 through 81.437. (3-30-07)

**65. Member of the Public.** For purposes of Subsection 006.103.a.xvi., a person located at any off-site point where there is a residence, school, business or office. (3-30-07)

**66. Mercury. Total mercury including elemental mercury and mercury compounds.** ( )

**67. Mercury Best Available Control Technology (MBACT).** An emission standard for mercury based on the maximum degree of reduction practically achievable as specified by the Department on an individual case-by-case basis taking into account energy, economic and environmental impacts, and other relevant impacts specific to the source. A Department approved MBACT shall be valid until the source subject to the MBACT is modified. If the proposed modification to the source subject to MBACT occurs within ten (10) years of the MBACT determination, a new MBACT review shall not be triggered as long as the source can meet the existing MBACT requirements. If the proposed modification occurs more than ten (10) years after

the MBACT determination, then the proposed modification shall be subject to a new MBACT review. ( )

**668. Modification.** (4-11-06)

a. Any physical change in, or change in the method of operation of, a stationary source or facility which results in an emission increase as defined in Section 007 or which results in the emission of any regulated air pollutant not previously emitted. (4-11-06)

b. Any physical change in, or change in the method of operation of, a stationary source or facility which results in an increase in the emissions rate of any state only toxic air pollutant, or emissions of any state only toxic air pollutant not previously emitted. (4-11-06)

c. Fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law. (4-11-06)

d. For purposes of this definition of modification, routine maintenance, repair and replacement shall not be considered physical changes and the following shall not be considered a change in the method of operation: (3-30-07)

i. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)

ii. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)

iii. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material and use of such fuel or raw material is not specifically prohibited in a permit. (4-5-00)

**679. Monitoring.** Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. (5-1-94)

**6870. Most Impaired Days.** The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the highest amount of visibility impairment. (3-30-07)

**6971. Multiple Chamber Incinerator.** Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. (5-1-94)

**702. Natural Conditions.** Includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration. (3-30-07)

**743. New Stationary Source or Facility.** (5-1-94)

**a.** Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or (5-1-94)

**b.** The restart of a nonoperating facility shall be considered a new stationary source or facility if: (5-1-94)

**i.** The restart involves a modification to the facility; or (5-1-94)

**ii.** After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. (5-1-94)

**724. Nonattainment Area.** Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant. (5-1-94)

**735. Noncondensibles.** Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. (5-1-94)

**746. Odor.** The sensation resulting from stimulation of the human sense of smell. (5-1-94)

**757. Opacity.** A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)

**768. Open Burning.** The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)

**779. Operating Permit.** A permit issued by the Director pursuant to Sections 300 through 386 and/or 400 through 461. (4-5-00)

**780. Particulate Matter.** Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)

**7981. Particulate Matter Emissions.** All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method in

accordance with Section 157. (4-5-00)

**802. Permit to Construct.** A permit issued by the Director pursuant to Sections 200 through 228. (7-1-02)

**813. Person.** Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)

**824. PM-10.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)

**835. PM-10 Emissions.** All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. (4-5-00)

**846. Potential to Emit/Potential Emissions.** The maximum capacity of a facility or stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility or source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a facility or stationary source. (3-30-07)

**857. Portable Equipment.** Equipment which is designed to be dismantled and transported from one (1) job site to another job site. (5-1-94)

**868. PPM (parts per million).** Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)

**879. Prescribed Fire Management Burning.** The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)

- a. Fire hazard reduction; (5-1-94)
- b. The control of pests, insects, or diseases; (5-1-94)
- c. The promotion of range forage improvements; (5-1-94)
- d. The perpetuation of natural ecosystems; (5-1-94)
- e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)

f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)

g. Other accepted natural resource management purposes. (5-1-94)

**8890. Primary Ambient Air Quality Standard.** That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. (5-1-94)

**891. Process or Process Equipment.** Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. (5-1-94)

**902. Process Weight.** The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of the process weight. (5-1-94)

**913. Process Weight Rate.** The rate established as follows: (5-1-94)

a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; (4-5-00)

b. For cyclical or batch source operations, the total process weight for a period that covers a complete cycle of operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (4-5-00)

**924. Quantifiable.** The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). (4-5-00)

**935. Radionuclide.** A type of atom which spontaneously undergoes radioactive decay. (5-1-94)

**946. Regional Haze.** Visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources. (3-30-07)

**957. Regulated Air Pollutant.** (4-11-06)

a. For purposes of determining applicability of major source permit to operate requirements, issuing, and modifying permits pursuant to Sections 300 through 397, and in accordance with Title V of the federal Clean Air Act amendments of 1990, 42 U.S.C. Section

7661 et seq., “regulated air pollutant” shall have the same meaning as in Title V of the federal Clean Air Act amendments of 1990, and any applicable federal regulations promulgated pursuant to Title V of the federal Clean Air Act amendments of 1990, 40 CFR Part 70; (4-11-06)

**b.** For purposes of determining applicability of any other operating permit requirements, issuing, and modifying permits pursuant to Sections 400 through 410, the federal definition of “regulated air pollutant” as defined in Subsection 006.94.a. shall also apply; (3-30-07)

**c.** For purposes of determining applicability of permit to construct requirements, issuing, and modifying permits pursuant to Sections 200 through 228, except Section 214, and in accordance with Part D of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7501 et seq., “regulated air pollutant” shall mean those air contaminants that are regulated in non-attainment areas pursuant to Part D of Subchapter I of the federal Clean Air Act and applicable federal regulations promulgated pursuant to Part D of Subchapter I of the federal Clean Air Act, 40 CFR 51.165; and (4-11-06)

**d.** For purposes of determining applicability of any other major or minor permit to construct requirements, issuing, and modifying permits pursuant to 200 through 228, except Section 214, “regulated air pollutant” shall mean those air contaminants that are regulated in attainment and unclassifiable areas pursuant to Part C of Subchapter I of the federal Clean Air Act, 40 CFR 52.21, and any applicable federal regulations promulgated pursuant to Part C of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7470 et seq. (4-11-06)

**968. Replicable.** Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. (4-5-00)

**979. Responsible Official.** One (1) of the following: (5-1-94)

**a.** For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (5-1-94)

**i.** The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars); or (4-5-00)

**ii.** The delegation of authority to such representative is approved in advance by the Department. (5-1-94)

**b.** For a partnership or sole proprietorship: a general partner or the proprietor, respectively. (5-1-94)

**c.** For a municipality, State, Federal, or other public agency: either a principal

executive officer or ranking elected official. For the purposes of Section 123, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (4-5-00)

**d.** For Phase II sources: (5-1-94)

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and (5-1-94)

ii. The designated representative for any other purposes under 40 CFR Part 70. (5-1-94)

**~~98~~100. Safety Measure.** Any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions. (4-5-00)

**~~99~~101. Salvage Operation.** Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

**~~100~~2. Scheduled Maintenance.** Planned upkeep, repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (3-20-97)

**~~101~~3. Secondary Ambient Air Quality Standard.** That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. (5-1-94)

**~~102~~4. Secondary Emissions.** Emissions which would occur as a result of the construction, modification, or operation of a stationary source or facility, but do not come from the stationary source or facility itself. Secondary emissions must be specific, well defined, quantifiable, and affect the same general area as the stationary source, facility, or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the primary stationary source, facility or modification. Secondary emissions do not include any emissions which come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. (3-30-07)

**~~103~~5. Shutdown.** The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. (5-1-94)

**~~104~~6. Significant.** In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following: (4-11-06)

- a. Pollutant and emissions rate: (4-11-06)
  - i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)
  - ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)
  - iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)
  - iv. Particulate matter, twenty-five (25) tons per year of particulate matter emissions; fifteen (15) tons per year of PM<sub>10</sub> emissions; (4-11-06)
  - v. Ozone, forty (40) tons per year of volatile organic compounds; (4-11-06)
  - vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
  - vii. Fluorides, three (3) tons per year; (5-1-94)
  - viii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
  - ix. Hydrogen sulfide (H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - x. Total reduced sulfur (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xi. Reduced sulfur compounds (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; (5-1-94)
  - xiii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; (5-1-94)
  - xiv. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; (5-1-94)
  - xv. Municipal solid waste landfill emissions (measured as nonmethane organic compounds), fifty (50) tons per year; or (4-11-06)
  - xvi. Radionuclides, a quantity of emissions, from source categories regulated by 40 CFR Part 61, Subpart H, that have been determined in accordance with 40 CFR Part 61, Appendix D and by Department approved methods, that would cause any member of the public to receive an annual effective dose equivalent of at least one tenth (0.1) mrem per year, if total facility-wide emissions contribute an effective dose equivalent of less than three (3) mrem per year; or any radionuclide emission rate, if total facility-wide radionuclide emissions contribute an effective dose equivalent of greater than or equal to three (3) mrem per year. (5-1-95)
- b. In reference to a net emissions increase or the potential of a source or facility to



emit a regulated air pollutant not listed in Subsection 006.103.a. above and not a toxic air pollutant, any emission rate; or (3-30-07)

**c.** For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted regulated air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. (4-5-00)

**1057. Significant Contribution.** Any increase in ambient concentrations which would exceed the following: (5-1-94)

**a.** Sulfur dioxide: (5-1-94)

i. One (1.0) microgram per cubic meter, annual average; (5-1-94)

ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)

iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)

**b.** Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)

**c.** Carbon monoxide: (5-1-94)

i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)

ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)

**d.** PM-10: (5-1-94)

i. One (1.0) microgram per cubic meter, annual average; (5-1-94)

ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average. (5-1-94)

**1068. Small Fire.** A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)

**1079. Smoke.** Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)

**10810. Smoke Management Plan.** A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)

**10911. Smoke Management Program.** A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. (5-1-94)

**1102. Source.** A stationary source. (5-1-94)

**1143. Source Operation.** The last operation preceding the emission of air pollutants, when this operation: (5-1-94)

**a.** Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)

**b.** Is not an air cleaning device. (5-1-94)

**1124. Special Fuels.** All fuel suitable as fuel for diesel engines; a compressed or liquefied gas obtained as a by-product in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles. (3-29-10)

**1135. Stack.** Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)

**1146. Stage 1 Vapor Collection.** Used during the refueling of underground gasoline storage tanks to reduce hydrocarbon emissions. Vapors in the tank, which are displaced by the incoming gasoline, are routed through a hose into the gasoline cargo tank and returned to the terminal for processing. Two (2) types of Stage 1 systems exist: coaxial and dual point. (3-29-10)

**a.** Coaxial System. A Stage 1 vapor collection system that requires only one (1) tank opening. The tank opening is usually four (4) inches in diameter with a three (3) inch diameter product fill tube inserted into the opening. Fuel flows through the inner tube while vapors are displaced through the annular space between the inner and outer tubes. (3-29-10)

**b.** Dual Point System. A Stage 1 vapor collection system that consists of two (2) separate tank openings, one (1) for delivery of the product and the other for the recovery of vapors. (3-29-10)

**1157. Standard Conditions.** Except as specified in Subsection 576.02 for ambient air quality standards, a dry gas temperature of twenty degrees Celsius (20C) sixty-eight degrees Fahrenheit (68F) and a gas pressure of seven hundred sixty (760) millimeters of mercury (14.7 pounds per square inch) absolute. (4-5-00)

**1168. Startup.** The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)

**1179. Stationary Source.** Any building, structure, facility, emissions unit, or installation which emits or may emit any air pollutant. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)

**11820. Tier I Source.** Any of the following: (5-1-94)

- a.** Any source located at any major facility as defined in Section 008; (4-5-00)
- b.** Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60, and required by EPA to obtain a Part 70 permit; (4-11-06)
- c.** Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, and required by EPA to obtain a Part 70 permit, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (4-11-06)
- d.** Any Phase II source; and (5-1-94)
- e.** Any source in a source category designated by the Department. (5-1-94)
- 11921. Total Suspended Particulates.** Particulate matter as measured by the method described in 40 CFR 50 Appendix B. (4-5-00)
- 1202. Toxic Air Pollutant.** An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)
- 1213. Toxic Air Pollutant Carcinogenic Increments.** Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one (1) microgram per cubic meter (1 ug/m<sup>3</sup>) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)
- 1224. Toxic Air Pollutant Non-carcinogenic Increments.** Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)
- 1235. Toxic Substance.** Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)
- 1246. Trade Waste.** Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)
- 1257. TRS (Total Reduced Sulfur).** Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)
- 1268. Unclassifiable Area.** An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)

**1279. Uncontrolled Emission.** An emission which has not been treated by control equipment. (5-1-94)

**12830. Upset.** An unplanned disruption in the normal operations of any equipment or emissions unit which may cause excess emissions. (4-5-00)

**12931. Visibility Impairment.** Any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions. (3-30-07)

**1302. Visibility in Any Mandatory Class I Federal Area.** Includes any integral vista associated with that area. (3-30-07)

**1313. Wigwam Burner.** Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. (5-1-94)

**1324. Wood Stove Curtailment Advisory.** An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**215. MERCURY EMISSION STANDARD FOR NEW OR MODIFIED SOURCES.**

No owner or operator may commence construction or modification of a stationary source or facility that results in an increase in annual potential emissions of mercury of twenty-five (25) pounds or more unless the owner or operator has obtained a permit to construct under Sections 200 through 228 of these rules. The permit to construct application shall include an MACT analysis for the new or modified source or sources for review and approval by the Department. A determination of applicability under Section 215 shall be based upon the best available information. Fugitive emissions shall not be included in a determination of applicability under Section 215. ( )

**01. Exemptions.** New or modified stationary sources within a source category subject to 40 CFR Part 63 are exempt from the requirements of Section 215. ( )

**02. Applicability.** Except as provided in Subsection 215.01, Section 215 applies to all new or modified sources for which an application for a permit to construct was submitted to the Department on or after July 1, 2011. ( )

**2156. -- 219. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**221. CATEGORY I EXEMPTION.**

No permit to construct is required for a source that satisfies the criteria set forth in Section 220 and the following: (4-5-00)

**01. Below Regulatory Concern.** The maximum capacity of a source to emit an air pollutant under its physical and operational design considering limitations on emissions such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed shall be less than ten percent (10%) of the significant emission rates set out in the definition of significant at Section 006. (4-5-00)

**02. Radionuclides.** The source shall have potential emissions that are less than one percent (1%) of the applicable radionuclides standard in 40 CFR Part 61, Subpart H. (4-5-00)

**03. Toxic Air Pollutants.** The source shall comply with Section 223. (4-5-00)

**04. Mercury.** The source shall have potential emissions that are less than twenty-five (25) pounds per year of mercury. Fugitive emissions shall not be included in the calculation of potential mercury emissions. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. TIER II OPERATING PERMIT.**

**01. Optional Tier II Operating Permits.** The owner or operator of any stationary source or facility which is not subject to (or wishes to accept limitations on the facility's potential to emit so as to not be subject to) Sections 300 through 399 may apply to the Department for an operating permit to: (7-1-02)

**a.** Authorize the use of alternative emission limits (bubbles) pursuant to Section 440; (5-1-94)

**b.** Authorize the use of an emission offset pursuant to Sections 204.02.b. or 206; (4-6-05)

**c.** Authorize the use of a potential to emit limitation, an emission reduction or netting transaction to exempt a facility or modification from certain requirements for a permit to construct; (4-5-00)

**d.** Authorize the use of a potential to emit limitation to exempt the facility from Tier I permitting requirements. (4-5-00)

**e.** Bank an emission reduction credit pursuant to Section 461; (5-1-94)

**02. Required Tier II Operating Permits.** ( )

**a.** A Tier II operating permit is required for any stationary source or facility which: ( )

**i.** ~~Is~~ not subject to Sections 300 through 399 with a permit to construct which establishes any emission standard different from those in these rules. (~~7-1-02~~)( )

**ii.** Has annual actual mercury emissions in excess of sixty-two (62) pounds. Fugitive emissions shall not be included in a determination of the actual mercury emissions. The owner or operator of the stationary source or facility shall submit a Tier II permit application for review and approval by the Department, no later than twelve (12) months after becoming subject to Subsection 401.02.a.ii., that includes an MBACT analysis for all sources that emit mercury. A determination of applicability under Subsection 401.02 shall be based upon best available information. An MBACT analysis for review and approval by the Department shall be included in a Tier II renewal application for any mercury emitting source not otherwise subject to MBACT. ( )

**b.** Stationary sources within a source category subject to 40 CFR Part 63 are exempt from the requirements of Subsection 401.02.a.ii. ( )

**03. Tier II Operating Permits Required by the Department.** The Director may require or revise a Tier II operating permit for any stationary source or facility whenever the Department determines that: (5-1-94)

**a.** Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or(4-5-00)

**b.** Specific emission standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (5-1-94)

**04. Multiple Tier II Operating Permits.** Subject to approval by EPA, the Director may issue one (1) or more Tier II operating permits to a facility which allow any specific stationary source or emissions unit within that facility a future compliance date of up to three (3) years beyond the compliance date of any provision of these rules, provided the Director has reasonable cause to believe such a future compliance date is warranted. (4-5-00)

**05. Tier II Operating Permits Establishing a Facility Emissions Cap.** The owner or operator of any stationary source or facility may request a Tier II operating permit establishing a Facility Emissions Cap (FEC) pursuant to Sections 175 through 181. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**585. TOXIC AIR POLLUTANTS NON-CARCINOGENIC INCREMENTS.**

The screening emissions levels (EL) and acceptable ambient concentrations (AAC) for non-carcinogens are as provided in the following table. The AAC in this section are twenty-four (24)

hour averages.

(6-30-95)

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
60-35-5	Acetamide (NY)	--	0.002	0.0003
64-19-7	Acetic acid	25	1.67	1.25
108-24-7	Acetic anhydride	20	1.33	1
67-64-1	Acetone	1780	119	89
75-05-8	Acetonitrile	67	4.47	3.35
540-59-0	Acetylene dichloride, See 1,2-Dichloroethylene			
79-27-6	Acetylene tetrabromide	15	1	.75
107-02-8	Acrolein	0.25	0.017	0.0125
79-10-7	Acrylic acid	30	2	1.5
107-18-6	Allyl alcohol	5	0.333	.25
106-92-3	Allyl glycidyl ether	22	1.47	1.1
2179-59-1	Allyl propyl disulfide	12	0.8	0.6
7429-90-5	Aluminum Including:			
NA	Metal & Oxide	10	0.667	0.5
NA	Pyro powders	5	0.333	0.25
NA	Soluble salts	2	0.133	0.10
NA	Alkyls not otherwise classified	2	0.133	0.10
141-43-5	2-Aminoethanol, See Ethanolamine			
504-29-0	2-Aminopyridine	2	0.133	0.10
7664-41-7	Ammonia	18	1.2	0.9
12125-02-9	Ammonium chloride fume	10	0.667	0.5
3825-26-1	Ammonium perfluoro-octanoate	0.1	0.007	0.05
7773-06-0	Ammonium sulfamate	10	0.667	0.5
628-63-7	n-Amyl acetate	530	35.3	26.5
626-38-0	Sec-Amyl acetate	665	44.3	33.25
7440-36-0	Antimony & compounds, as Sb (handling & use)	0.5	0.033	0.025
86-88-4	ANTU	0.3	0.02	0.015
7784-42-1	Arsine	0.2	0.013	0.01
86-50-0	Azinphos-methyl	0.2	0.013	0.01
7440-39-3	Barium, soluble compounds, as Ba	0.5	0.033	0.025
17804-35-2	Benomyl	10	0.67	0.5

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
7106-51-4	p-Benzoquinone, See Quinone			
94-36-0	Benzoyl peroxide	5	0.333	0.25
92-52-4	Biphenyl	1.5	0.1	0.075
1304-82-1	Bismuth telluride undoped	10	0.667	0.05
NA	Bismuth telluride if selenium doped	5	0.333	0.25
1303-96-4	Borates, tetra odium salts - Including:			
NA	Anhydrous	1	0.067	0.05
NA	Decahydrate	5	0.333	0.25
NA	Pentahydrate	1	0.067	0.05
1303-86-2	Boron oxide	10	0.667	0.5
10294-33-4	Boron tribromide	10	0.667	0.5
7637-07-2	Boron trifluoride	3	0.2	0.25
314-40-9	Bromacil	10	0.667	0.5
7726-95-6	Bromine	0.7	0.047	0.035
7789-30-2	Bromine penta-fluoride	0.7	0.047	0.035
75-25-2	Bromoform	5	0.333	0.25
109-79-5	Butanethiol, see Butyl mercaptan			
78-93-3	2-Butanone, see Methyl ethyl ketone			
112-87-2	2-butoxyethyl acetate	---	8.33	1.25
111-76-2	2-Butoxyethanol (EGBG)	120	8	6
123-86-4	n-Butyl acetate	710	47.3	35.5
105-46-4	sec-Butyl acetate	950	63.3	47.5
540-88-5	tert-Butyl acetate	950	63.3	47.5
141-32-2	Butyl acrylate	55	3.67	2.75
71-36-3	n-Butyl alcohol	150	10	7.5
78-92-2	Sec-Butyl alcohol	305	20.3	15.25
75-65-0	tert-Butyl alcohol	300	20	15
109-73-9	Butylamine	15	1	.75
124-17-4	Butyl carbitol acetate (ID)	---	0.846	.625
1189-85-1	tert-Butyl chromate, as CrO3	0.1	0.007	.005
2426-08-6	n-Butyl glycidyl ether	135	9	6.75
138-22-7	n-Butyl lactate	25	1.67	1.25
109-79-5	Butyl mercaptan	1.8	0.12	0.09
89-72-5	o-sec-Butylphenol	30	2	1.5



CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
98-51-1	p-tert-Butyltoluene	60	4	3
13765-19-0	Calcium carbonate	10	0.667	0.5
156-62-7	Calcium cyanamide	0.5	0.033	0.025
1305-62-0	Calcium hydroxide	5	0.333	0.25
1305-78-8	Calcium oxide	2	0.133	0.1
1344-95-2	Calcium silicate (synthetic)	10	0.667	0.5
13397-24-5	Calcium sulfate	10	0.667	0.5
76-22-2	Camphor, synthetic	12	0.8	0.6
105-60-2	Caprolactam - Including:			
	Dust	1	0.067	0.05
	Vapor	20	1.33	1.0
1333-86-4	Carbon black	3.5	0.23	0.175
2425-06-1	Captafol	0.1	0.007	0.005
133-06-2	Captan	5	0.333	0.25
463-58-1	Carbonyl sulfide	0.4	0.027	0.02
63-25-2	Carbaryl	5	0.333	0.25
1563-66-2	Carbofuran	0.1	0.007	0.005
75-15-0	Carbon disulfide	30	2	1.5
558-13-4	Carbon tetrabromide	1.4	0.093	0.07
75-44-5	Carbonyl chloride, See Phosgene			
353-50-4	Carbonyl fluoride	5	0.333	0.25
120-80-9	Catechol	20	1.33	1.0
21351-79-1	Cesium hydroxide	2	0.133	0.10
133-90-4	Chloramben (PL)	---	887	133
8001-35-2	Chlorinated camphene	0.5	0.0333	0.025
31242-93-0	Chlorinated diphenyl oxide	0.5	0.033	0.025
7782-50-5	Chlorine	3	0.2	0.15
10049-04-4	Chlorine dioxide	0.3	0.02	0.015
7790-91-2	Chlorine trifluoride (CL)	0.38	0.025	0.002
107-20-0	Chloroacetaldehyde	0.32	0.021	0.015
78-95-5	Chloroacetone	0.38	0.0253	0.019
532-27-4	a-Chloroacetophenone	0.32	0.021	0.016
79-04-9	Chloroacetyl chloride	0.2	0.013	0.01
108-90-7	Chlorobenzene	350	23.3	17.5

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
510-15-6	Chlorobenzilate (PL1)	---	0.047	0.035
2698-41-1	O-Chlorobenzylidene malononitrile (CL)	0.4	0.0027	0.03
126-99-8	2-Chloro-1,3-butadiene, see B-Chloroprene			
107-07-3	2-Chloroethanol, see Ethylene chlorohydrin			
600-25-9	1-Chloro-1-nitro propane	10	0.667	0.5
95-57-8	2-Chlorophenol (and all isomers) (ID)	---	0.033	0.025
76-06-2	Chloropicrin	0.7	0.047	0.037
126-99-8	B-chloroprene	36	2.4	1.8
2039-87-4	o-Chlorostyrene	285	19	14.25
95-49-8	o-Chlorotoluene	250	16.7	12.5
1929-82-4	2-Chloro-6-(tri-chloromethyl) pyridine, see Nitrapyrin			
2921-88-2	Chlorpyrifos	0.2	0.013	0.01
7440-47-3	Chromium metal - Including:	0.5	0.033	0.025
7440-47-3	Chromium (II) compounds, as Cr	0.5	0.033	0.025
7440-47-3	Chromium (III) compounds, as Cr	0.5	0.033	0.025
2971-90-6	Clopidol	10	0.667	0.5
NA	Coal dust (<5% silica)	2	0.133	0.1
10210-68-1	Cobalt carbonyl as Co	0.1	0.007	0.005
16842-03-8	Cobalt hydrocarbonyl as Co	0.1	0.007	0.005
7440-48-4	Cobalt metal, dust, and fume	0.05	0.0033	0.0025
7440-50-8	Copper:			
7440-50-8	Fume	0.2	0.013	0.01
7440-50-8	Dusts & mists, as Cu	1	0.067	0.05
95-48-7	o-Cresol	22	1.47	1.1
108-39-4	m-Cresol	22	1.47	1.1
106-44-5	p-Cresol	22	1.47	1.1
1319-77-3	Cresols/Cresylic Acid (isomers and mixtures)	22	1.47	1.1
123-73-9	Crotonaldehyde	5.7	0.38	0.285
299-86-5	Cruformate	5	0.333	0.25
98-82-8	Cumene	245	16.3	12.25
420-04-2	Cyanamide	2	0.133	0.1
592-01-8	Cyanide and compounds as CN	5	0.333	0.25
110-82-7	Cyclohexane	1050	70	52.5
108-93-0	Cyclohexanol	200	13.3	10

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
108-94-1	Cyclohexanone	100	6.67	5
110-83-8	Cyclohexene	1015	67.7	50.75
108-91-8	Cyclohexylamine	41	2.73	2.05
121-82-4	Cyclonite	1.5	0.1	0.075
542-92-7	Cyclopentadiene	200	13.3	10
287-92-3	Cyclopentane	1720	114.667	86
94-75-7	2,4-D	10	0.667	0.5
17702-41-9	Decaborane	0.3	0.02	0.015
8065-48-3	Demeton	0.1	0.007	0.005
123-42-2	Diacetone alcohol	240	16	12
39393-37-8	Dialkyl phthalate (ID)	---	16.4	2.46
107-15-3	1,2-Diaminoethane, See Ethylenediamine			
333-41-5	Diazinon	0.1	0.007	0.005
334-88-3	Diazomethane	0.34	0.023	0.017
19287-45-7	Diborane	0.1	0.007	0.005
102-81-8	2-N-Dibutylamino ethanol	14	0.933	0.7
2528-36-1	Dibutyl phenyl phosphate	3.5	0.233	0.175
107-66-4	Dibutyl phosphate	8.6	0.573	0.43
84-74-2	Dibutyl phthalate	5	0.333	0.25
7572-29-4	Dichloroacetylene	0.39	0.0026	0.0195
95-50-1	o-Dichlorobenzene	300	20	15
106-46-7	1,4-Dichlorobenzene	450	30	22.5
118-52-5	1,3-Dichloro-5, 5-dimethyl hydantoin	0.2	0.013	0.025
75-34-3	Dichloroethane	405	27	20.25
540-59-0	1,2-Dichloroethylene	790	52.7	39.5
111-44-4	Dichloroethyl ether	30	2	1.5
75-43-4	Dichlorofluoromethane	40	2.67	2
594-72-9	1, 1-Dichloro-1-nitroethane	10	0.667	0.5
78-87-5	1,2-Dichloropropane, see Propylene dichloride			
75-99-0	2,2-Dichloropropionic acid	6	0.4	0.3
62-73-7	Dichlorvos	1	0.067	0.05
141-66-2	Dicrotophos	0.25	0.017	0.125
77-73-6	Dicyclopentadiene	30	2	1.5
102-54-5	Dicyclopentadienyl iron	10	0.667	0.5

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
111-42-2	Diethanolamine	15	1	0.75
109-89-7	Diethylamine	30	2	1.5
100-37-8	2-Diethylamino-ethanol	50	3.33	2.5
111-40-0	Diethylene triamine	4	0.267	0.2
60-29-7	Diethyl ether, see Ethyl ether			
96-22-0	Diethyl Ketone	705	47	35.25
84-66-2	Diethyl phthalate	5	0.333	0.25
2238-07-5	Diglycidyl ether (DGE)	0.53	0.035	0.0265
123-31-9	Dihydroxybenzene, see Hydroquinone			
108-83-8	Diisobutyl ketone	145	9.67	7.25
108-18-9	Diisopropylamine	20	1.33	1
127-19-5	Dimethyl acetamide	35	2.33	1.75
124-40-3	Dimethylamine	9.2	0.613	0.46
60-11-7	Dimethyl aminoazo-benzene (NY)	---	0.002	0.0003
1300-73-8	Dimethylamino-benzene, see Xylidine			
121-69-7	Dimethylaniline (N,N-Dimethylaniline)	25	1.67	1.25
1330-20-7	Dimethylbenzene, see Xylene			
300-76-5	Dimethyl-1,2-dibromo-2-dichloroethyl phosphate, see Naled			
68-12-2	Dimethylformamide	30	2	1.5
108-83-8	2,6-Dimethyl-4-heptanone, see Diisobutyl ketone			
131-11-3	Dimethylphthalate	5	0.333	0.25
148-01-6	Dinitolmide	5	0.333	0.25
528-29-0	Dinitrobenzene	1	0.067	0.05
99-65-0	m (or) 1,3-Dinitrobenzene	1	0.067	0.05
100-25-4	p (or) 1,4-Dinitrobenzene	1	0.067	0.05
534-52-1	Dinitro-o-cresol	0.2	0.013	0.01
148-01-6	3,5-Dinitro-o-toluamide, see Dinitolmide			
117-84-0	N-Dioctyl Phthalate	5	0.333	0.25
78-34-2	Dioxathion	0.2	0.013	0.01
92-52-4	Diphenyl, see Biphenyl			
122-39-4	Diphenylamine	10	0.667	0.5
	Diphenyl methane diisocyanate, see Methylenediphenyl diisocyanate			

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
34590-94-8	Dipropylene glycol methyl ether	600	40	30
123-19-3	Dipropyl ketone	235	15.7	11.75
85-00-7	Diquat	0.5	0.033	0.01
97-77-8	Disulfiram	2	0.133	0.1
298-04-4	Disulfoton	0.1	0.007	0.005
128-37-0	2,6-Ditert. butyl-p-cresol	10	0.667	0.5
330-54-1	Diuron	10	0.667	0.5
108-57-6	Divinyl benzene	50	3.33	2.5
1302-74-5	Emery (corundum) total dust (> 1% silica)	10	0.667	0.5
115-29-7	Endosulfan	0.1	0.007	0.005
72-20-8	Endrin	0.1	0.007	0.005
13838-16-9	Enflurane	566	37.7	28.3
1395-21-7	Enzymes, see Subtilisins			
2104-64-5	EPN (Ethoxy-4-Nitro-phenoxy phenylphosphine)	0.5	0.033	0.025
106-88-7	1,2-Epoxybutane (MI)	---	0.8	0.6
75-56-9	1,2-Epoxypropane, see Propylene oxide			
556-52-5	2,3-Epoxy-1-propanol, see Glycidol			
75-08-1	Ethanethiol, see Ethyl mercaptan			
141-43-5	Ethanolamine	8	0.533	0.4
563-12-2	Ethion	0.4	0.027	0.02
110-80-5	2-Ethoxyethanol	19	1.27	0.95
111-15-9	2-Ethoxyethyl acetate (EGEEA)	27	1.8	1.35
141-78-6	Ethyl acetate	1400	93.3	70
64-17-5	Ethyl alcohol	1880	125	94
75-04-7	Ethylamine	18	1.2	0.9
541-85-5	Ethyl amyl ketone	130	8.67	6.5
100-41-4	Ethyl benzene	435	29	21.75
74-96-4	Ethyl bromide	22	1.47	1.1
106-35-4	Ethyl butyl ketone	230	15.3	11.5
51-79-6	Ethyl carbamate (Urethane) (WA)	---	0.002	0.0015
75-00-3	Ethyl chloride	2640	176	132
107-07-3	Ethylene chlorohydrin	3	0.2	0.15
107-15-3	Ethylenediamine	25	1.67	1.25
107-06-2	Ethylene dichloride	40	2.667	2

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
107-21-1	Ethylene glycol vapor (CL)	127	0.846	6.35
628-96-6	Ethylene glycol denigrate	0.31	0.021	0.016
110-49-6	Ethylene glycol methyl ether acetate, see 2-Methoxyethyl acetate			
96-45-7	Ethylene thiourea (PL2)	---	0.047	0.035
109-94-4	Ethyl formate	300	20	15
16219-75-3	Ethylidene norbornene (CL)	25	0.167	1.25
75-08-1	Ethyl mercaptan	1	0.067	0.05
100-74-3	N-Ethylmorpholine	23	1.53	1.15
78-10-4	Ethyl silicate	85	5.67	4.25
22224-92-6	Fenamiphos	0.1	0.007	0.005
115-90-2	Fensulfothion	0.1	0.007	0.005
55-38-9	Fenthion	0.2	0.013	0.01
14484-64-1	Ferbam	10	0.667	0.5
12604-58-9	Ferrovandium dust	1	0.067	0.05
NA	Fibrous glass dust	10	0.667	0.5
NA	Fine Mineral Fibers - Including: mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less. (ID)	--	0.661	0.5
NA	Fluorides, as F	2.5	0.167	0.125
7782-41-4	Fluorine	2	0.133	0.1
944-22-9	Fonofos	0.1	0.007	0.005
75-12-7	Formamide	30	2	1.5
64-18-6	Formic acid	9.4	0.627	0.47
98-01-1	Furfural	8	0.533	0.4
98-00-0	Furfuryl alcohol	40	2.67	2
7782-65-2	Germanium tetrahydride	0.6	0.04	0.03
NA	Glass, Fibrous or dust, see Fibrous glass dust			
111-30-8	Glutaraldehyde (CL)	0.82	0.0047	0.041
556-52-5	Glycidol	75	5	3.75
110-80-5	Glycol monoethyl ether, see 2-Ethoxyethanol			
7440-58-6	Hafnium	0.5	0.033	0.025
110-43-0	2-Heptanone, see Methyl n-amyl ketone			
106-35-4	3-Heptanone, see Ethyl butyl ketone			

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
151-67-7	Halothane	404	26.9	20.2
142-82-5	Heptane (n-Heptane)	1640	109	82
77-47-4	Hexachlorocyclopentadiene	0.1	0.007	0.005
1335-87-1	Hexachloronaphthalene	0.2	0.013	0.010
684-16-2	Hexafluoroacetone	0.7	0.047	0.035
822-06-0	Hexamethylene diisocyanate	0.03	0.002	0.0015
680-31-9	Hexamethylphosphoramide (WA)	---	0.002	0.0015
110-54-3	Hexane (n-Hexane)	180	12	9
591-78-6	2-Hexanone, see Methyl n-butyl ketone			
108-10-1	Hexone, see Methyl isobutyl ketone			
108-84-9	sec-Hexyl acetate	300	20	15
107-41-5	Hexylene glycol (CL)	121	0.806	6.05
37275-59-5	Hydrogenated terphenyls	5	0.333	0.25
10035-10-6	Hydrogen bromide (CL)	10	0.0667	0.5
7647-01-0	Hydrogen chloride (CL)	7.5	0.05	0.375
7722-84-1	Hydrogen peroxide	1.5	0.1	0.075
7783-06-4	Hydrogen sulfide	14	0.933	0.7
123-31-9	Hydroquinone	2	0.133	0.1
123-42-2	4-Hydroxy-4-Methyl-2-pentanone, see Diacetone alcohol			
996-61-1	2 -Hydroxypropyl acrylate	3	0.2	0.15
95-13-6	Indene	45	3	2.25
7440-74-6	Indium & compounds as In	0.1	0.007	0.005
7553-56-2	Iodine (CL)	0.1	0.0067	0.005
75-47-8	Iodoform	10	0.667	0.5
1309-37-1	Iron oxide fume (Fe2O3) as Fe	5	0.333	0.25
13463-40-6	Iron pentacarbonyl as Fe	0.8	0.053	0.04
7439-89-6	Iron salts, soluble, as Fe	1	0.067	0.05
123-92-2	Isoamyl acetate	525	35	26.25
123-51-3	Isoamyl alcohol	360	24	18
110-19-0	Isobutyl acetate	700	46.7	35
78-83-1	Isobutyl alcohol	150	10	6
26952-21-6	Isooctyl alcohol	270	18	13.5
78-59-1	Isophorone	28	1.867	1.4
4098-71-9	Isophorone diisocyanate	0.09	0.006	0.0045

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
109-59-1	Isopropoxyethanol	105	7	5.25
108-21-4	Isopropyl Acetate	1040	69.3	52
67-63-0	Isopropyl alcohol	980	65.3	49
75-31-0	Isopropylamine	12	0.8	0.6
643-28-7	N-Isopropylaniline	10	0.667	0.5
108-20-3	Isopropyl ether	1040	69.3	52
4016-14-2	Isopropyl glycidyl ether (IGE)	240	16	12
1332-58-7	Kaolin (respirable dust)	2	0.133	0.1
463-51-4	Ketene	0.9	0.06	0.045
7580-67-8	Lithium hydride	0.025	0.002	0.00125
546-93-0	Magnesite	10	0.667	0.5
1309-48-4	Magnesium oxide fume	10	0.667	0.5
121-75-5	Malathion	10	0.667	0.5
108-31-6	Maleic anhydride	1	0.067	0.05
7439-96-5	Manganese as Mn Including:			
7439-96-5	Dust & compounds	5	0.333	0.25
7439-96-5	Fume	1	0.067	0.05
101-68-8	MDI, see Methylene diphenyl isocyanate			
NA	Mercaptans not otherwise listed (ID)	---	0.033	0.025
<del>7439-97-6</del>	<del>Mercury Including-</del>			
NA	Mercury (Aryl & inorganic compounds as Hg)	0.1	0.007	0.005
NA	Mercury (Alkyl compounds as Hg)	0.01	0.001	0.0005
NA	Mercury (vapors except Alkyl as Hg)	0.05	0.003	0.0025
141-79-7	Mesityl oxide	60	4	3
79-41-4	Methacrylic acid	70	4.67	3.5
74-93-1	Methanethiol, see Methyl mercaptan			
67-56-1	Methanol	260	17.3	13
16752-77-5	Methomyl	2.5	0.17	0.125
72-43-5	Methoxychlor	10	0.667	0.5
109-86-4	2-Methoxyethanol	16	1.07	0.8
110-49-6	2-Methoxyethyl acetate	24	1.6	1.2
150-76-5	4-Methoxyphenol	5	0.333	0.25
108-65-6	1-methoxy-2-proanol acetate (ID)	n/a	24	3.6
79-20-9	Methyl acetate	610	40.7	30.5



CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
74-99-7	Methyl acetylene	1640	109	82
NA	Methyl acetylene-propadiene mix (MAPP)	1640	109	82
96-33-3	Methyl acrylate	35	2.33	1.75
126-98-7	Methylacrylonitrile	3	0.2	0.15
74-89-5	Methylamine	12	0.8	0.6
108-11-2	Methyl emyl alcohol, see Methyl isobutyl carbinol			
110-43-0	Methyl n-amyl ketone	235	15.7	11.75
100-61-8	N-Methyl aniline	2	0.133	0.1
74-83-9	Methyl bromide	19	1.27	0.95
591-78-6	Methyl n-butyl ketone	20	1.33	1
109-86-4	Methyl cellosolve (2-Methoxyethanol)	15.6	1.04	0.78
74-87-3	Methyl chloride	103	6.867	5.15
71-55-6	Methyl chloroform	1910	127	95.5
137-05-3	Methyl 2-cyano-acrylate	8	0.533	0.4
25639-42-3	Methylcyclohexanol	235	15.7	11.75
583-60-8	o-Methylcyclohexanone	230	15.3	11.5
8022-00-2	Methyl demeton	0.5	0.033	0.01
101-68-8	Methylenediphenyl diisocyanate (MDI)	0.05	0.003	0.0025
5124-30-1	Methylene bis (4-cyclohexyl isocyanate)	0.11	0.007	0.0055
78-93-3	Methyl ethyl ketone (MEK)	590	39.3	29.5
1338-23-4	Methyl ethyl ketone peroxide (CL)	1.5	0.01	0.0075
107-31-3	Methyl formate	246	16.4	12.3
541-85-5	5-Methyl-3-heptanone, see Ethyl amyl ketone			
110-12-3	Methyl isoamyl ketone	240	16	12
108-11-2	Methyl isobutyl carbinol	104	6.93	5.2
108-10-1	Methyl isobutyl ketone	205	13.7	10.25
624-83-9	Methyl isocyanate	0.05	0.003	0.0025
563-80-4	Methyl isopropyl ketone	705	47	35.25
74-93-1	Methyl mercaptan	0.5	0.033	0.025
80-62-6	Methyl methacrylate	410	27.3	20.5
298-00-0	Methyl parathion	0.2	0.013	0.01
107-87-9	Methyl propyl ketone	700	46.7	35
681-84-5	Methyl silicate	6	0.4	0.3
98-83-9	a-Methyl styrene	240	16	10.20

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
109-87-5	Methylal (dimethoxymethane)	3110	207	155.5
108-87-2	Methylcyclohexane	1610	107	80.5
21087-64-9	Metribuzin	5	0.333	0.25
7786-34-7	Mevinphos	0.1	0.007	0.005
12001-26-2	Mica (Respirable dust)	3	0.2	0.15
NA	Mineral Wool Fiber (no asbestos)	10	0.667	0.5
7439-98-7	Molybdenum as Mo - Including:			
NA	Soluble compounds	5	0.333	0.25
NA	Insoluble compounds	10	0.667	0.5
108-90-7	Monochlorobenzene, see Chlorobenzene			
6923-22-4	Monocrotophos	0.25	0.017	0.0125
110-91-8	Morpholine	70	4.67	0.35
300-76-5	Naled	3	0.2	0.15
91-20-3	Naphthalene	50	3.33	2.5
54-11-5	Nicotine	0.5	0.033	0.025
1929-82-4	Nitrapyrin	10	0.667	0.5
7697-37-2	Nitric acid	5	0.333	0.25
100-01-6	p-Nitroaniline	3	0.2	0.15
98-95-3	Nitrobenzene	5	0.333	0.25
100-00-5	p-Nitrochlorobenzene	3	0.2	0.15
79-24-3	Nitroethane	310	20.7	15.5
7783-54-2	Nitrogen trifluoride	29	1.93	1.45
55-63-0	Nitroglycerin	0.46	0.031	0.023
75-52-5	Nitromethane	50	3.333	2.5
108-03-2	1-Nitropropane	90	6	4.5
99-08-1	m (or) 3-Nitrotoluene	11	0.733	0.55
88-72-2	o (or) 2-Nitrotoluene	11	0.733	0.55
99-99-0	p (or) 4-Nitrotoluene	11	0.733	0.55
76-06-2	Nitrotrichloromethane, see Chloropicrin			
10024-97-2	Nitrous oxide	90	6	4.5
111-84-2	Nonane	1050	70	52.5
2234-13-1	Octachloronaphthalene	0.1	0.007	0.005
111-65-9	Octane	1400	93.3	70
NA	Oil mist, mineral	5	0.333	0.25

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
20816-12-0	Osmium tetroxide as Os	0.002	0.0001	0.0001
144-62-7	Oxalic acid	1	0.067	0.05
7783-41-7	Oxygen difluoride (CL)	0.11	0.0007	0.0005
8002-74-2	Paraffin wax fume	2	0.133	0.1
4685-14-7	Paraquat	0.1	0.007	0.007
NA	Paraquat, all Compounds	0.1	0.007	0.005
56-38-2	Parathion	0.1	0.007	0.005
19624-22-7	Pentaborane	0.01	0.001	0.0005
1321-64-8	Pentachloronaphthalene	0.5	0.033	0.025
82-68-8	Pentachloronitrobenzene	0.5	0.0333	0.025
87-86-5	Pentachlorophenol	0.5	0.033	0.025
109-66-0	Pentane	1770	118	88.5
107-87-9	2-Pentanone, see Methyl propyl ketone			
594-42-3	Perchloromethyl mercaptan	0.8	0.053	0.04
7616-94-6	Perchloryl Fluoride	13	0.867	0.65
93763-70-3	Perlite	10	0.667	0.5
532-27-4	Phenacyl chloride, see a-Chloroacetophenone			
108-95-2	Phenol	19	1.27	0.95
92-84-2	Phenothiazine	5	0.333	0.25
108-45-2	m-Phenylenediamine	0.1	0.0067	0.005
106-50-3	p-Phenylenediamine	0.1	0.007	0.005
101-84-8	Phenyl ether, vapor	7	0.467	0.035
122-60-1	Phenyl glycidyl ether (PGE)	6	0.4	0.3
108-98-5	Phenyl mercaptan	2	0.133	0.1
638-21-1	Phenylphosphine (CL)	0.25	0.0017	0.00125
298-02-2	Phorate	0.05	0.003	0.001
7786-34-7	Phosdrin, see Mevinphos			
75-44-5	Phosgene	0.4	0.027	0.02
7803-51-2	Phosphine	0.4	0.027	0.02
7664-38-2	Phosphoric acid	1	0.067	0.05
7723-14-0	Phosphorus	0.1	0.007	0.005
10025-87-3	Phosphorus oxychloride	0.6	0.04	0.030
10026-13-8	Phosphorus penta-chloride	1	0.067	0.05
1313-80-3	Phosphorus penta-sulfide	1	0.067	0.05

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
1314-56-3	Phosphorus pentoxide (ID)	--	0.067	0.05
7719-12-2	Phosphorus trichloride	1.5	0.1	0.075
85-44-9	Phthalic anhydride	6	0.4	0.3
626-17-5	m-Phthalodinitrile	5	0.333	0.25
1918-02-1	Picloram	10	0.667	0.5
88-89-1	Picric acid	0.1	0.006	0.005
83-26-1	Pindone	0.1	0.007	0.005
142-64-3	Piperazine dihydro-chloride	5	0.333	0.25
83-26-1	2-Pivaloyl-1,3-indandione, see Pindone			
7440-06-4	Platinum - Including:			
7440-06-4	Metal	1	0.067	0.05
NA	Soluble salts, as Pt	0.002	0.0001	0.0001
65997-15-1	Portland cement	10	0.667	0.5
1310-58-3	Potassium hydroxide	2	0.133	0.1
107-19-7	Propargyl alcohol	2.3	0.153	0.115
123-38-6	Propionaldehyde (LA)	0.43	0.0287	0.0215
79-09-4	Propionic acid	30	2	1.5
114-26-1	Propoxur (Baygon)	0.5	0.033	0.025
109-60-4	n-Propyl acetate	840	56	42
71-23-8	Propyl alcohol	500	33.3	25
78-87-5	Propylene dichloride	347	23.133	17.35
6423-43-4	Propylene glycol dinitrate	0.34	0.023	0.017
107-98-2	Propylene glycol monomethyl ether	360	24	18
75-56-9	Propylene oxide	48	3.2	2.4
627-13-4	n-Propyl nitrate	105	7	5.25
8003-34-7	Pyrethrum	5	0.333	0.25
110-86-1	Pyridine	15	1	0.75
120-80-9	Pyrocatechol, see Catechol			
106-51-4	Quinone	0.4	0.027	0.02
121-84-4	RDX, see Cyclonite			
NA	Refractory Ceramic Fibers (see entry for specific content of emissions, ex: silica)			
108-46-3	Resorcinol	45	3	2.25

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
7440-16-6	Rhodium - Including:			
7440-16-6	Metal	1	0.067	0.05
NA	Insoluble compounds, as Rh	1	0.067	0.05
NA	Soluble compounds, as Rh	0.01	0.001	0.0005
299-84-3	Ronnel	10	0.667	0.5
83-79-4	Rotenone (commercial)	5	0.333	0.25
8030-30-6	Rubber solvent (Naphtha)	1590	106	79.5
14167-96-1	Salcoine as CO	0.1	0.007	0.005
7782-49-2	Selenium	0.2	0.013	0.010
NA	Selenium and compounds as Se	0.2	0.013	0.01
136-78-7	Sesone	10	0.667	0.5
7803-62-5	Silane, see silicon tetrhydride			
NA	Silica - amorphous - Including:			
61790-53-2	Diatomaceous earth (uncalcined)	10	0.667	0.5
112926-00-8	Precipitated silica	10	0.667	0.5
112926-00-8	Silica gel	10	0.667	0.5
NA	Silica, crystalline - Including:			
14464-46-1	Cristobalite	0.05	0.0033	0.0025
14808-60-7	quartz	0.1	0.0067	0.005
60676-86-0	silica, fused	0.1	0.0067	0.005
15468-32-3	tridymite	0.05	0.0033	0.0025
1317-95-9	Tripoli	0.1	0.0067	0.005
7440-21-3	Silicon	10	0.667	0.5
409-21-2	Silicon carbide	10	0.667	0.5
7803-62-5	Silicon tetrahydride	7	0.467	0.35
7440-22-4	Silver - Including			
7440-22-4	Metal	0.1	0.007	0.005
7440-22-4	Soluble compounds, as Ag	0.01	0.001	0.005
26628-22-8	Sodium azide (CL)	0.3	0.002	0.0015
7631-90-5	Sodium bisulfite	5	0.333	0.25
136-78-7	Sodium 2,4-dichloro-phenoxyethyl sulfate, see Sesone			
62-74-8	Sodium fluoroacetate	0.05	0.003	0.0025
1310-73-2	Sodium hydroxide	2	0.133	0.1
7681-57-4	Sodium metabisulfite	5	0.333	0.25

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
NA	Stearates (not including toxic metals)	10	0.667	0.5
7803-52-3	Stibine	0.5	0.033	0.025
8052-41-3	Stoddard solvent	525	35	26.25
57-24-9	Strychnine	0.15	0.01	0.0075
60-41-3	Strychnine sulfate as strichnine	0.15	0.01	0.01
100-42-5	Styrene monomer (ID)	--	6.67	1
1395-21-7	Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme)	0.00006	4.OE-07	3.0E-7
3689-24-5	Sulfotep	0.2	0.013	0.01
7664-93-9	Sulfuric acid	1	0.067	0.05
10025-67-9	Sulfur monochloride (CL)	6	0.04	0.03
5714-22-7	Sulfur pentafluoride (CL)	0.1	0.0007	0.0005
7783-60-0	Sulfur tetrafluoride (CL)	0.4	0.0027	0.002
2699-79-8	Sulfuryl fluoride	20	1.33	1
35400-43-2	Sulprofos	1	0.067	0.05
8065-48-3	Systox, see Demeton			
93-76-5	2,4,5-Trichlorophen-oxyacetic acid (2,4,5,-T)	10	0.667	0.05
7440-25-7	Tantalum	5	0.333	0.25
3689-24-5	TEDP, see Sulfotep			
13494-80-9	Tellurium & Compounds as Te	0.1	0.007	0.005
7783-80-4	Tellurium hexafluoride as Te	0.2	0.013	0.01
3383-96-8	Temephos	10	0.667	0.5
107-49-3	TEPP (Tetraethyl-pyrophosphate)	0.05	0.003	0.0025
26140-60-3	Terphenyls	4.7	0.313	0.235
1335-88-2	Tetrachloronaphthalene	2	0.133	0.10
78-00-2	Tetraethyl Lead	0.1	0.007	0.005
597-64-8	Tetraethyltin as organic tin	0.1	0.007	0.005
109-99-9	Tetrahydrofuran	590	39.3	29.5
75-74-1	Tetramethyl lead, as Pb	0.15	0.01	0.0075
3333-52-6	Tetramethyl succinonitrile	3	0.2	0.15
509-14-8	Tetranitromethane	8	0.533	0.4
7722-88-5	Tetrasodium pyrophosphate	5	0.333	0.25
479-45-8	Tetryl	1.5	0.1	0.075
7440-28-0	Thallium, soluble Compounds, as Tl	0.1	0.007	0.005

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
96-69-5	4,4-Thiobis (6 tert, butyl-m-cresol)	10	0.667	0.5
68-11-1	Thioglycolic acid	4	0.267	0.2
7719-09-7	Thionyl chloride (CL)	4.9	0.0327	0.245
137-26-8	Thiram	5	0.333	0.25
7440-31-5	Tin - Including:			
7440-31-5	Metal	2	0.133	0.1
NA	Oxide & inorganic compounds, except SnH4, as Sn	2	0.133	0.1
NA	Organic compounds as Sn	0.1	0.007	0.005
108-88-3	Toluene (toluol)	375	25	18.75
584-84-9	Toluene-2,4-di-isocyanate (TDI)	0.04	0.003	0.002
10-41-54	p-Toluenesulfonic acid (ID)	n/a	0.067	0.05
126-73-8	Tributyl phosphate	2.2	0.147	0.11
76-03-9	Trichloroacetic acid	7	0.467	0.35
120-82-1	1,2,4-Trichlorobenzene (CL)	37	2.47	1.85
79-01-6	Trichloroethylene	269	17.93	13.45
1321-65-9	Trichloronaphthalene	5	0.333	0.25
76-06-2	Trichloronitromethane, See Chloropicrin			
95-95-4	2,4,5-Trichlorophenol (MA)	---	---	0.0016
96-18-4	1,2,3-Trichloropropane	60	4	3
121-44-8	Triethylamine	4.1	0.27	0.2
1582-09-8	Trifluralin (PL3)	---	7.7	1.15
552-30-7	Trimellitic anhydride	0.04	0.003	0.002
75-50-3	Trimethylamine	12	0.8	0.6
25551-13-7	Trimethyl benzene (mixed and individual isomers)	123	8.2	6.15
540-84-1	2,2,4-Trimethyl-pentane	350	23.3	17.5
121-45-9	Trimethyl phosphite	10	0.667	0.5
479-45-8	2,4,6-Trinitrophenyl-methylnitramine, see Tetryl			
78-30-8	Triorthocresyl phosphate	0.1	0.007	0.005
603-34-9	Triphenyl amine	5	0.333	0.25
115-86-6	Triphenyl phosphate	3	0.2	0.15
7440-33-7	Tungsten - Including:			
NA	Insoluble compounds	5	0.333	0.25
NA	Soluble compounds	1	0.067	0.05
8006-64-2	Turpentine	560	37.3	28

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
7440-61-1	Uranium (natural) Soluble & insoluble compounds as U	0.2	0.013	0.01
110-62-3	n-Valeraldehyde	175	11.7	8.75
1314-62-1	Vanadium, as V2O5 Respirable Dust & fume	0.05	0.003	0.0025
108-05-4	Vinyl acetate (ID)	0.2		
25013-15-4	Vinyl toluene	240	16	12
8032-32-4	VM & P Naphtha	1370	91.3	68.5
81-81-2	Warfarin	0.1	0.007	0.005
1330-20-7	Xylene (o-, m-, p-isomers)	435	29	21.75
1477-55-0	m-Xylene a, a-diamine (CL)	0.1	0.0007	0.0005
1300-73-8	Xylidine	2.5	1.67	0.125
7440-65-5	Yttrium (Metal and compounds as Y)	1	0.067	0.05
7440-66-6	Zinc metal (ID)	--	0.667	0.5
7646-85-7	Zinc chloride fume	1	0.067	0.05
1314-13-2	Zinc oxide fume	5	0.333	0.05
1314-13-2	Zinc oxide dust	10	0.667	0.5
7440-67-7	Zirconium compounds as Zr	5	0.333	0.25

(6-30-95)( )



**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**  
**DOCKET NO. 58-0101-1002**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the [Idaho Administrative Bulletin, August 4, 2010, Vol. 10-8, pages 139 through 147](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/air/58\\_0101\\_1002\\_pending.cfm](http://www.deq.idaho.gov/rules/air/58_0101_1002_pending.cfm) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** 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 when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov).

Dated this 7th day of October, 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](mailto:Paula.wilson@deq.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

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

**Wednesday, September 8, 2010 at 3:30 p.m.**

**Department of Environmental Quality  
Conference Room B  
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2010. In addition, this proposed rule revises Section 577, Ambient Air Quality Standards, and Section 581, Prevention of Significant Deterioration Increments, by deleting rule text that has become obsolete or unnecessary due to the update of federal regulations incorporated by reference in Section 107.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2010 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon adjournment of the 2011 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Incorporation by reference is necessary to ensure that the state rules are consistent with federal regulations. An electronic copy of the federal regulations incorporated by reference can be obtained at <http://www.gpoaccess.gov/ecfr/index.html>.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov).

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 8, 2010.

DATED this 29th day of June, 2010.

***THE FOLLOWING IS THE PENDING TEXT FOR DOCKET NO. 58-0101-1002***

**008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.**

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)

**a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)

**b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)

**c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)

**d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)

**e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)

**f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)

**g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)

**h.** Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

**i.** Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

**j.** Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

**04. Designated Representative.** A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

**05. Draft Permit.** The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

**06. Emergency.** For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable

to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

**07. Final Permit.** The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

**08. General Permit.** A Tier I permit issued pursuant to Section 335. (3-23-98)

**09. Insignificant Activity.** Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

**10. Major Facility.** A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

**a.** For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

**b.** For non-attainment areas: (3-23-98)

i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section

7411a(f)(1) or (2) if the area is “marginal” or “moderate,” one hundred (100) tpy or more, if the area is “serious,” fifty (50) tpy or more, if the area is “severe,” twenty-five (25) tpy or more, and if the area is “extreme,” ten (10) tpy or more. (3-23-98)

**c.** The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-11-06)

**i.** Designated facilities. (3-23-98)

**ii.** All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

**11. Part 70.** Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2009~~10~~, are hereby incorporated by reference. (~~3-29-10~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

**02. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

**a.** All federal publications: U.S. Government Printing Office, <http://www.gpoaccess.gov/ecfr/index.html>; and (~~3-20-04~~)( )

**b.** All documents herein incorporated by reference: (7-1-97)

**i.** Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

**ii.** State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

**03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-1-94)

**a.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans ~~and Appendix W to Part 51—Guideline on Air Quality Models.~~ 40 CFR Part 51 revised as of July 1, 2009<sup>10</sup>. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (3-29-10)( )

**i.** All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

**ii.** Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

**b.** National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )

~~**c.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Protection of Visibility, 40 CFR 51.301, 51.304(a), 51.307, and 51.308, revised as of July 1, 2009. (3-29-10)~~

~~**d.** Approval and Promulgation of Implementation Plans, 40 CFR Part 52 revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

~~**e.** Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

~~**f.** Ambient Air Quality Surveillance, ~~Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring)~~, 40 CFR Part 58, ~~Appendix B~~, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

~~**g.** Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

~~**h.** National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

~~**i.** National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

~~**j.** Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

~~**k.** Permits, 40 CFR Part 72, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

~~**l.** Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2009<sup>10</sup>. (3-29-10)( )~~

- ~~m~~**l.** Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2009~~10~~.  
(3-29-10)( )
- ~~m~~**m.** Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- ~~n~~**n.** Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2009~~10~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference.  
(3-29-10)( )
- ~~o~~**o.** The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,266 the final rule for Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units, only as it applies to coal fired electric steam generating units as defined in 40 CFR 60.24, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules. (3-30-07)
- ~~p~~**p.** The final rule for Primary National Ambient Air Quality Standards for Sulfur Dioxide, 75 Fed. Reg. 35,520 through 35,603 (June 22, 2010) to be codified at 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards), 40 CFR Part 53 (Ambient Air Monitoring Reference and Equivalent Methods), and 40 CFR Part 58 (Ambient Air Quality Surveillance). This final rule is effective on August 23, 2010. ( )
- ~~q~~**q.** The final rule for Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 through 31,608 (June 3, 2010) to be codified at 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), 40 CFR Part 52 (Approval and Promulgation of Implementation Plans), and 40 CFR Part 70 (State Operating Permit Programs). This final rule is effective on August 2, 2010. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**577. AMBIENT AIR QUALITY STANDARDS FOR ~~SPECIFIC AIR POLLUTANTS~~ FLUORIDES.**

~~01.~~ ~~Particulate Matter. PM-10—particles with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers.~~ (5-1-94)



- ~~**a.** Primary and Secondary Standards. Primary and secondary PM-10 standards are: (5-1-94)~~
- ~~i. Annual Standard. Fifty (50) micrograms per cubic meter, as an annual arithmetic mean—never expected to be exceeded in any calendar year. (5-1-94)~~
- ~~ii. Twenty-four (24) Hour Standard. One hundred fifty (150) micrograms per cubic meter as a maximum twenty-four (24) hour concentration—never expected to be exceeded more than once in any calendar year. (5-1-94)~~
- ~~**b.** Attainment and Expected Exceedance Determination. For the purpose of determining attainment of the primary and secondary PM-10 standards, expected exceedances shall be determined in accordance with Appendix K of 40 CFR Part 50. (5-1-94)~~
- ~~**02.** Sulfur Oxides (Sulfur Dioxide). (5-1-94)~~
- ~~**a.** Primary Standards. Primary sulfur dioxide air quality standards are: (5-1-94)~~
- ~~i. Annual Standard. Eighty (80) micrograms per cubic meter (0.03 ppm), as an annual arithmetic mean—not to be exceeded in any calendar year. (5-1-94)~~
- ~~ii. Twenty-four (24) Hour Standard. Three hundred sixty five (365) micrograms per cubic meter (0.14 ppm), as a maximum twenty-four (24) hour concentration—not to be exceeded more than once in any calendar year. (5-1-94)~~
- ~~**b.** Secondary Standards. Secondary air quality standards are one thousand three hundred (1,300) micrograms per cubic meter (0.50 ppm), as a maximum three (3) hour concentration—not to be exceeded more than once in any calendar year. (5-1-94)~~
- ~~**03.** Ozone. Primary and secondary air quality standards are 0.12 ppm (two hundred thirty five (235) micrograms per cubic meter)—maximum one (1) hour concentration not expected to be exceeded more than once per year. (5-1-94)~~
- ~~**04.** Nitrogen Dioxide. Primary and secondary air quality standards are one hundred (100) micrograms per cubic meter (0.05 ppm)—annual arithmetic mean. (5-1-94)~~
- ~~**05.** Carbon Monoxide. Primary and secondary air quality standards are: (5-1-94)~~
- ~~**a.** Eight (8) Hour Standard. Ten (10) milligrams per cubic meter (9 ppm)—maximum eight (8) hour concentration not to be exceeded more than once per year. (5-1-94)~~
- ~~**b.** One (1) Hour Standard. Forty (40) milligrams per cubic meter (35 ppm)—maximum one (1) hour concentration not to be exceeded more than once per year. (5-1-94)~~
- ~~**06.** Fluorides. Primary and secondary air quality standards are those concentrations in the ambient air which result in a total fluoride content in vegetation used for feed and forage of no more than: (5-1-94)~~

- a01. Annual Standard.** Forty (40) ppm, dry basis -- annual arithmetic mean. (5-1-94)
- b02. Bimonthly Standard.** Sixty (60) ppm, dry basis -- monthly concentration for two (2) consecutive months. (5-1-94)
- e03. Monthly Standard.** Eighty (80) ppm, dry basis -- monthly concentration never to be exceeded. (5-1-94)
- ~~**07. Lead.** Primary and secondary standards for lead and its compounds, measured as elemental lead, are one and one-half (1.5) micrograms per cubic meter (1.5 ug/m<sup>3</sup>), as a quarterly arithmetic mean -- not to be exceeded in any quarter of any calendar year. (5-1-94)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**581. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) INCREMENTS.**

The purpose of Section 581 is to establish the allowable degree of deterioration for the areas within the State which have air quality better than the ambient standards. (5-1-94)

**01. Incorporated Federal Program Requirements - Class I, II and III Areas.** ~~In any area designated as Class I, II, or III, increases in any ambient concentration over the baseline concentration shall be limited to the following:~~ Class I, II, and III area PSD increment requirements contained in 40 CFR 52.21(c) are incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at [www.gpoaccess.gov/ecfr](http://www.gpoaccess.gov/ecfr).

<b>CLASS AREAS</b>	<b>Maximum Allowable Increase (Micrograms per cubic meter)</b>
<del>CLASS I AREAS</del>	
<del>PM-10:</del>	
<del>Annual arithmetic mean</del>	<del>4</del>
<del>Maximum twenty-four (24) hour average</del>	<del>8</del>
<del>Sulfur dioxide:</del>	
<del>Annual arithmetic mean</del>	<del>2</del>
<del>Maximum twenty-four (24) hour average</del>	<del>5</del>
<del>Maximum three (3) hour average</del>	<del>25</del>
<del>Nitrogen dioxide:</del>	
<del>Annual arithmetic mean</del>	<del>2.5</del>
<del>CLASS II AREAS</del>	

<i>CLASS AREAS</i>	<i>Maximum Allowable Increase (Micrograms per cubic meter)</i>
<i>PM-10:</i>	
<i>Annual arithmetic mean</i>	17
<i>Maximum twenty-four (24) hour average</i>	30
<i>Sulfur dioxide:-</i>	
<i>Annual arithmetic mean</i>	20
<i>Maximum twenty-four (24) hour average</i>	91
<i>Maximum three (3) hour average</i>	512
<i>Nitrogen dioxide:</i>	
<i>Annual arithmetic mean</i>	25
<i>CLASS III AREAS</i>	
<i>PM-10:</i>	
<i>Annual arithmetic mean</i>	34
<i>Maximum twenty-four (24) hour average</i>	60
<i>Sulfur dioxide:-</i>	
<i>Annual arithmetic mean</i>	40
<i>Maximum twenty-four (24) hour average</i>	182
<i>Maximum three (3) hour average</i>	700
<i>Nitrogen dioxide:-</i>	
<i>Annual arithmetic mean</i>	50

(5-3-03)( )

**02. Exceedances.** For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location. (5-1-94)

**03. Exclusions.** The following concentrations shall be excluded in determining compliance with the maximum allowable increases: (5-1-94)

**a.** Concentrations attributable to the increase in emissions from facilities which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such facilities before the effective date of such order or plan; this shall not apply more than five (5) years after the effective date of such order or plan; (5-1-94)

**b.** Concentrations of PM-10 attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified facilities; (7-1-97)

**c.** The increase in concentrations attributable to new facilities outside the United

States over the concentrations attributable to existing facilities which are included in the baseline concentration; and (5-1-94)

**d.** Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen dioxide, or particulate matter from facilities which are affected by a revision to the SIP approved by the U.S. Environmental Protection Agency; this exclusion shall not exceed two (2) years unless a longer time is approved by the U.S. Environmental Protection Agency, is not renewable, and applies only to revisions which: (5-1-94)

**i.** Would not affect the applicable pollutant concentrations in a Class I area or an area where an applicable increment is known to be violated and would not cause or contribute to a violation of an ambient air quality standard; and (4-11-06)

**ii.** Require limitations to be in effect at the end of the approved time period which would ensure that the emissions from facilities affected by the revision would not exceed those concentrations occurring before the revision was approved. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**751. GENERAL RULES.**

Any owner or operator of a facility subject to Sections 750 and 751 shall demonstrate compliance with Section 751 by January 1, 1982, in accordance with a compliance schedule, listing increments of progress, which shall be submitted to the Department on or before August 1, 1980. (5-1-94)

**01. Emission Limitations -- Phosphate Fertilizer Plants.** No person shall allow, suffer, cause or permit the discharge into the atmosphere of total fluoride emissions in gaseous and in particulate form, expressed as fluoride (F-), from the phosphate fertilizer plant sources listed in Subsection 751.03 in excess of thirty hundredths (0.30) pounds of fluoride per ton of P<sub>2</sub>O<sub>5</sub> input to the calciner operation, calculated at maximum rated capacity. (5-1-94)

**02. Monitoring, Testing, and Reporting Requirements.** Compliance with Subsection 751.01 will be adjudged upon the results of the continuing program of fluoride sampling of potential grazing areas and alfalfa growing areas conducted by the Department. Sampling conducted by any person subject to Section 751 may be accepted for determining compliance with Subsection 751.01 if such sampling is conducted at sites approved by the Department in advance of sampling, using analytical procedures appearing in the Procedures Manual for Air Pollution Control, Section I (Source Test Methods) or equivalent methods approved by the Department in advance of sampling. Compliance with Subsection 751.01 shall be demonstrated by testing methods approved in advance by the Department. When approved by the Director in advance of sampling, engineering calculations may be submitted in lieu of emission data. Monitoring and reporting requirements shall be included in operating permits granted to each facility. (5-1-94)

**03. Source Specific Permits.** To assure compliance with Subsection 751.01, the

Director shall specify methods for calculating total allowable emissions and shall issue source specific permits containing emission limitations for the following sources within phosphate fertilizer plants: (5-1-94)

- a. Calciner operation; and (5-1-94)
- b. Wet phosphoric acid plants; and (5-1-94)
- c. Super phosphoric acid production; and (5-1-94)
- d. Diammonium phosphate plants; and (5-1-94)
- e. Monoammonium phosphate production; and (5-1-94)
- f. Triple super phosphate (mono calcium phosphate) production. (5-1-94)

**04. Exemptions.** The provisions of Subsections 751.01, 751.02, and 751.03 shall not apply to any phosphate fertilizer facility which produces mono ammonium phosphate exclusively if no animal feed is grown or if no animal grazing occurs or if the animal feed and forage meets the ambient air quality standards for fluorides specified in ~~Subsection 577.06~~ within a three (3) mile radius of such facility. This exemption shall only apply if the owner or operator of the facility, on an annual basis: ~~(7-1-97)~~( )

- a. Conducts a fluoride sampling program of potential grazing areas at locations approved in advance of sampling by the Department, using analytical techniques appearing in the Procedures Manual for Air Pollution Control, Section I (Source Test Methods); and (5-1-94)
- b. Submits the results of such sampling program to the Department as soon as they become available. (5-1-94)

# **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE**

**DOCKET NO. 58-0105-1001**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 4, 2010, Vol. 10-8, pages 148 through 154. DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/haz\\_waste/58\\_0105\\_1001\\_pending.cfm](http://www.deq.idaho.gov/rules/haz_waste/58_0105_1001_pending.cfm) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** 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 when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact John Brueck, [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov), (208)373-0458.

Dated this 7th day of October, 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](mailto:paula.wilson@deq.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 19, 2010. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA).

This proposed rule updates the federal regulations incorporated by reference to include those revised as of July 1, 2010. In addition, this proposed rule revises Section 005, Identification and Listing of Hazardous Waste, and deletes Section 014, Interim Status Surface Impoundments. The Section 005 revisions are necessary due to corrections made to the federal regulations under the Hazardous Waste Technical Corrections and Clarification Rule. Section 014 has been deleted because the permitting requirements have been included in Sections 008 and 009 and the state of Idaho does not have interim status surface impoundments that receive hazardous waste.

Groups interested in hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2010 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the conclusion of the 2011 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the Department of Environmental Quality (DEQ) to keep its rules up to date with federal

regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community. An electronic copy of the federal regulations incorporated by reference can be obtained at <http://www.gpoaccess.gov/ecfr/index.html>.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact John Brueck, [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov), (208)373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 1, 2010.

Dated this 29th day of June, 2010.

***THE FOLLOWING IS THE PENDING TEXT FOR DOCKET NO. 58-0105-1001***

**002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2009~~10~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-29-10)~~( )

**01. Exceptions.** Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (5-8-09)

**02. Availability of Referenced Material.** The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)



- a. U.S. Government Printing Office, <http://www.gpoaccess.gov/ecfr/index.html>; and  
(3-20-04)( )
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051,  
(208)334-3316; and (7-2-97)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255,  
(208)373-0502. (7-2-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009<sup>10</sup>. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, “Administrator” shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, “Federal Register” shall be defined as the Idaho Administrative Bulletin. (3-29-10)( )

**005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts, except the language “in the Region where the sample is collected” in 40 CFR 261.4(e)(3)(iii), ~~except remanded waste codes “K064, K065, K066, K090 and K091” listed in 40 CFR Part 261 Appendix VII, and except 40 CFR 261.23(a)(8)~~, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009<sup>10</sup>. For purposes of 40 CFR 261.10 and 40 CFR 261.11, “Administrator” shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.41(a), Regional Administrator shall be defined as U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification required under this section should also be sent to the Director. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), and 40 CFR 261 Appendix IX, “EPA” shall be defined as the U.S. Environmental Protection Agency. (3-29-10)( )

**01. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII’s facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.01.b., “new source” shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality

Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 005.01.b. and 005.01.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

**c. Subsequent Verification Testing.** (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill.

(3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be:

(3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or

(3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA.

(3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.

(3-16-96)

**d. Delisting Levels.**

(3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24.

(3-16-96)

**e. Modification of Treatment Process.**

(3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification.

(3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any

conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)

**f. Records and Data Retention and Submittal.** (3-16-96)

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

**g. Facility Merger and Name Change.** On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from Envirosafe Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to Envirosafe Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

## **006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.**

**01. Incorporation by Reference.** 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR

262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009~~10~~. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), “Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.21, 262.51, 262.53, 262.54(e), 262.54(g)(1), 262.60, and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), “United States or U.S.” shall be defined as the United States. ~~(3-29-10)~~( )

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

**007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.**

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009~~10~~. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), “United States” shall be defined as the United States. ~~(3-29-10)~~( )

**008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009~~10~~. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71(a)(3) and 264.1082(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-29-10)~~( )

**009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, “The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part,” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009~~10~~. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71(a)(3) and 265.1083(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-29-10)~~( )

**010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.**

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009~~10~~. ~~(3-29-10)~~( )

**011. LAND DISPOSAL RESTRICTIONS.**

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009<sup>10</sup>, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) “EPA” shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.) In 40 CFR 268.48(a), the entry for “2,4,6-Tribromophenol” is excluded. (3-29-10)( )

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009<sup>10</sup>. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. (3-29-10)( )

**013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).**

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2009<sup>10</sup>, except that 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. (3-29-10)( )

**014. ~~INTERIM STATUS SURFACE IMPOUNDMENTS (RESERVED).~~**

~~In accordance with Section 3005(j) of RCRA which is herein incorporated by reference, surface impoundments in existence on November 8, 1984, and qualifying for interim status shall not receive, store or treat hazardous waste after November 8, 1988, unless retrofitted to meet standards applicable to new impoundments or subject to an exemption. Copies of the federal statute herein incorporated by reference are available in the locations provided in Subsection 002.02. Standards applicable to new surface impoundments which are referenced in Section 3005(j) of RCRA as requirements of Section 3004(o) (42 U.S.C. 6924(o)) appear in federal regulations as 40 CFR Parts 264.220-232 and 265.220-231 and are incorporated as provided in Sections 008 and 009. (3-15-02)~~

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation by Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 20~~09~~10. For purposes of 40 CFR 279.43(c)(3)(ii) "Director" shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. ~~(3-29-10)~~(    )

**02. Used Oil as a Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

**a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

**b.** Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 20~~09~~10. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(3-29-10)~~(    )

**017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.**

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 20~~09~~10. ~~(3-29-10)~~(    )

**018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.**

40 CFR Part 267 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 20~~09~~10. ~~(3-29-10)~~(    )

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-1001

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 4, 2010, Vol. 10-8, pages 155 through 220. After consideration of public comments, the rule has been revised at Sections 100, 300, 311, 320, 323, and 400. In addition, Sections 514, 531, 541, and 544 have been revised as a result of DEQ review. The remainder of the rule has been adopted as proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/drinking\\_water/58\\_0108\\_1001\\_pending.cfm](http://www.deq.idaho.gov/rules/drinking_water/58_0108_1001_pending.cfm) or by contacting the undersigned.

**IDAHO CODE 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** 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 when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Mike Piechowski at (208) 373-0274, [mike.piechowski@deq.idaho.gov](mailto:mike.piechowski@deq.idaho.gov).

DATED this 7th day of October, 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](mailto:paula.wilson@deq.idaho.gov)



*THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 19, 2010. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to make revisions to the Idaho Rules for Public Drinking Water Systems for clarification purposes and for consistency within these and other DEQ rules.

The proposed rule clarifies definitions and facility design standards, reorganizes certain sections such as the filtration and disinfection process, and updates citations to documents incorporated by reference. In addition, the review of plans and specifications section has been revised for consistency with 2010 House Bill 451 (codified at Section 39-103(12), Idaho Code) and the current rule definition of “public drinking water system.” This rulemaking also includes corrections that are typographical and nonsubstantive in nature.

Drinking water system owners and operators, developers, consultants, engineers, cities, counties, industry, drinking water professional organizations, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2010 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon adjournment of the 2011 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

This proposed rule incorporates federal regulations by reference. Incorporation by reference is necessary to ensure that the state rules are consistent with federal regulations. An electronic copy of the federal regulations incorporated by reference can be obtained at <http://www.gpoaccess.gov/ecfr/index.html>. This proposed rule also updates the citation to the American Water Works Association (AWWA) Standards, which have been incorporated by reference into these rules since 2006. Information for obtaining the AWWA Standards is included in the proposed rule.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**IDAHO CODE 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Mike Piechowski at (208) 373-0274, [mike.piechowski@deq.idaho.gov](mailto:mike.piechowski@deq.idaho.gov).

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 1, 2010.

DATED this 29th day of June, 2010.

***THE FOLLOWING IS THE PENDING TEXT FOR DOCKET NO. 58-0108-1001***

**002. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIALS.**

**01. Incorporation by Reference.** The following documents are incorporated by reference into these rules. (4-11-06)

**a.** 40 CFR Parts 141 and 143. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection of 40 CFR Parts 141 and 143 shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules (4-11-06)

**b.** American Water Works Association (AWWA) Standards, effective ~~July 2006~~ December 2009, available for a fee from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337, <http://apps.awwa.org/ebusmain/OnlineStore.aspx>.  
(~~3-30-07~~)( )

**02. Availability of Specific Referenced Material.** Copies of specific documents referenced within these rules are available at the following locations: (4-11-06)

**a.** All federal regulations: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Telephone (202)783-3238; U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206) 553-4270; or <http://>

[www.gpoaccess.gov/ecfr/index.html](http://www.gpoaccess.gov/ecfr/index.html).

(4-11-06)

**b.** All documents incorporated by reference are available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502.  
(4-11-06)( )

**c.** Recommended Standards for Water Works: a report of the Water Supply Committee of the Great Lakes -- Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, published by Health Education Services, P.O. Box 7126, Albany, New York 12224, ~~2003~~, Telephone (518) 439-7286.  
(4-6-05)( )

**d.** Manual of Individual and Non-Public Water Supply Systems (EPA 570/9-91-004), published by the U.S. Environmental Protection Agency, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.20402, Telephone (202) 782-3238.  
(5-3-03)

**e.** U.S. Department of Commerce, National Bureau of Standards Handbook, No. 69, "Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure" as amended in 1963, NCRP Publications, P.O. Box 20175, Washington, D.C. 20014.  
(12-10-92)

**f.** Rules of the Idaho Water Resources Board available at [www.adm.idaho.gov/adminrules/rules/idapa37/37index.htm](http://www.adm.idaho.gov/adminrules/rules/idapa37/37index.htm), or the Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone (208) 287-4800.  
(3-30-07)

**g.** ANSI/NSF Standard 44-2002e -- 2004, Residential Cation Exchange Water Softeners, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010.  
(4-6-05)

**h.** ANSI/NSF Standard 53-2002e -- 2003, Drinking Water Treatment Units -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010.  
(4-6-05)

**i.** ANSI/NSF Standard 55-2002 -- 2002, Ultraviolet Microbiological Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010.  
(4-6-05)

**j.** ANSI/NSF Standard 58-2003 -- 2004, Reverse Osmosis Drinking Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010.  
(4-6-05)

**k.** ANSI/NSF Standard 60-2000a -- 2000, Drinking Water Treatment Chemicals -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010.  
(4-6-05)

**l.** ANSI/NSF Standard 61-2000a -- 2000, Drinking Water System Components -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann

Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)

**m.** American Water Works Association (AWWA) Standards, available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, (800) 926-7337, [www.awwa.org](http://www.awwa.org). (3-30-07)

**n.** Cross Connection Control Manual, available from Pacific Northwest Section of the American Water Works Association, P.O. Box 19581, Portland, OR, 97280-0581, Telephone (503) 246-5845. (3-30-07)

**o.** Manual of Cross-Connection Control, Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, KAP-200 University Park MC-2531, Los Angeles, CA 90089-2531, (866)545-6340, [www.usc.edu/dept/fccchr/](http://www.usc.edu/dept/fccchr/). (3-30-07)

**p.** Manual on Slow Sand Filtration (1991), published by AWWA Research Foundation 6666 West Quincy Avenue, Denver, CO 80235, (800)926-7337, [www.awwa.org](http://www.awwa.org). (3-30-07)

**q.** Slow Sand Filtration (1991), published by the American Society of Civil Engineers American Society of Civil Engineers, 1801 Alexander Bell Drive, Reston, VA 20191, (800)548-2723, [www.asce.org](http://www.asce.org). (3-30-07)

**r.** Slow Sand Filtration and Diatomaceous Earth Filtration for Small Water Systems, DOH Pub #331-204 (4/03), Washington State Department of Health, Division of Environmental Health, Office of Drinking Water, PO Box 47828, Olympia WA 98504-7828, (360)236-3100 or (800)521-0323, [http://www.doh.wa.gov/ehp/dw/Programs/water\\_sys\\_design.htm](http://www.doh.wa.gov/ehp/dw/Programs/water_sys_design.htm). (3-30-07)

**s.** Water System Design Manual, DOH Pub #331-123 (Rev. 8/01), Washington State Department of Health, Division of Environmental Health, Office of Drinking Water, PO Box 47828, Olympia WA 98504-7828, (360)236-3100 or (800)521-0323, [http://www.doh.wa.gov/ehp/dw/Programs/water\\_sys\\_design.htm](http://www.doh.wa.gov/ehp/dw/Programs/water_sys_design.htm). (3-30-07)

**t.** Submersible Motors: Application, Installation, Maintenance (Franklin Electric AIM manual), Franklin Electric, Bluffton, Indiana 46714, (800)348-2420, <http://www.franklin-electric.com/Manual/pdf/fullAIM.pdf>. (3-30-07)

**u.** Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources (March 1991 Edition), U.S. Environmental Protection Agency, <http://www.epa.gov/safewater/mdbp/implement.html>. (3-30-07)

**v.** Standard Methods for the Examination of Water and Wastewater, a joint publication of the American Public Health Association, the Water Environment Federation, and the American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235, 800-926-7337, [www.standardmethods.org](http://www.standardmethods.org). (3-30-07)

**w.** F480-02 Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension ratios (SDR), SCH 40 and SCH 80, American Society for

Testing and Materials (ASTM Standard F480-02). (3-30-07)

**x.** “Idaho Standards for Public Works Construction,” 2005 Edition, and subsequent revisions, Local Highway Technical Assistance Council, 3330 Grace Street, Boise, ID 83605, (208)344-0565. (4-11-06)

**y.** Memorandum of Understanding between the Idaho Department of Environmental Quality and the Idaho Division of Building Safety Plumbing Bureau, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, [www.deq.idaho.gov](http://www.deq.idaho.gov). (3-30-07)

**z.** Idaho General Safety and Health Standards (IGSHS), available from the Idaho Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642, (208)334-3950, [http://dbs.idaho.gov/safety\\_code/000.html](http://dbs.idaho.gov/safety_code/000.html). (3-30-07)

**aa.** Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, [www.deq.idaho.gov](http://www.deq.idaho.gov). (4-2-08)

**bb.** Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, [www.deq.idaho.gov](http://www.deq.idaho.gov). (4-2-08)

**cc.** Implementation Guidance for the Ground Water Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, [www.deq.idaho.gov](http://www.deq.idaho.gov). (5-8-09)

**dd.** [AWWA Recommended Practice for Backflow Prevention and Cross-Connection Control \(M14\), available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone \(800\) 926-7337.](#) ( )

**03. Precedence.** In the event of conflict or inconsistency between the language in these rules and that found in any document incorporated by reference, these rules shall prevail. (4-11-06)

### **003. DEFINITIONS.**

The definitions set forth in 40 CFR 141.2, revised as of July 1, 2006, are herein incorporated by reference except for the definition of the terms “action level,” “disinfection,” “noncommunity water system,” and “person.” (4-2-08)

**01. Action Level.** The concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source water, replace lead service lines, or undertake a public education program. (12-10-92)

**02. Administrator.** The Administrator of the United States Environmental Protection Agency. (4-5-00)

**03. Annual Samples.** Samples that are required once per calendar year. (12-10-92)

**04. Annular Opening.** As used in well construction, this term refers to the nominal

inside diameter of the borehole minus the outside diameter of the casing divided by two (2).  
(3-30-07)

**05. Aquifer.** A geological formation of permeable saturated material, such as rock, sand, gravel, etc., capable of yielding an economic quantity of water to wells and springs.  
(5-3-03)

**06. Available.** Based on system size, complexity, and source water quality, a properly licensed operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner.  
(4-6-05)

**07. Average Day Demand.** The volume of water used by a system on an average day based on a one (1) year period. See also the definition of Water Demand in these rules. (5-8-09)

**08. Backflow.** The reverse from normal flow direction in a plumbing system or water system caused by back pressure or back siphonage. (12-10-92)

**09. Bag Filters.** Pressure-driven separation devices that remove particulate matter larger than one (1) micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.  
(4-2-08)

**10. Bank Filtration.** A water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).  
(4-2-08)

**11. Board.** The Idaho Board of Environmental Quality. (5-3-03)

**12. Capacity.** The capabilities required of a public drinking water system in order to achieve and maintain compliance with these rules and the requirements of the federal Safe Drinking Water Act. It is divided into three (3) main elements: (4-5-00)

**a.** Technical capacity means the system has the physical infrastructure to consistently meet drinking water quality standards and treatment requirements and is able to meet the requirements of routine and emergency operations. It further means the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge. Training of operator(s) is required, as appropriate, for the system size and complexity.  
(4-6-05)

**b.** Financial capacity means the financial resources of the water system, including an appropriate budget; rate structure; cash reserves sufficient for current operation and maintenance, future needs and emergency situations; and adequate fiscal controls. (5-8-09)

**c.** Managerial capacity means that the management structure of the water system embodies the aspects of water system operations, including, but not limited to; (5-8-09)

**i.** Short and long range planning; (4-5-00)

- ii. Personnel management; (4-5-00)
- iii. Fiduciary responsibility; (4-5-00)
- iv. Emergency response; (4-5-00)
- v. Customer responsiveness; (4-5-00)
- vi. Source water protection; (4-5-00)
- vii. Administrative functions such as billing and consumer awareness; and (4-5-00)
- viii. Ability to meet the intent of the federal Safe Drinking Water Act. (4-5-00)

**13. Cartridge Filters.** Pressure-driven separation devices that remove particulate matter larger than one (1) micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside. (4-2-08)

**14. Combined Distribution System.** The interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water. (4-2-08)

**15. Community Water System.** A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. See also the definition of a Public Drinking Water System in these rules. (5-8-09)

**16. Components of Finished Water Storage.** Storage is available to serve the system if the storage structure or facility is elevated sufficiently or is equipped with sufficient booster pumping capability to pressurize the system. Components of finished water storage are further defined as: (5-8-09)

**a. Dead Storage.** Storage that is either not available for use in the system or can provide only substandard flows and pressures. (3-30-07)

**b. Effective Storage.** Effective storage is all storage other than dead storage and is made up of the additive components described in Paragraphs c. through f. of this Subsection. (5-8-09)

**c. Operational Storage.** Operational storage supplies water when, under normal conditions, the sources are off. This component is the larger of; (3-30-07)

i. The volume required to prevent excess pump cycling and ensure that the following volume components are full and ready for use when needed; or (3-30-07)

ii. The volume needed to compensate for the sensitivity of the water level sensors.

(3-30-07)

**d. Equalization Storage.** Storage of finished water in sufficient quantity to compensate for the difference between a water system's maximum pumping capacity and peak hour demand. (3-30-07)

**e. Fire Suppression Storage.** The water needed to support fire flow in those systems that provide it. (3-30-07)

**f. Standby Storage.** Standby storage provides a measure of reliability or safety factor should sources fail or when unusual conditions impose higher than anticipated demands. Normally used for emergency operation, if standby power is not provided, to provide water for eight (8) hours of operation at average day demand. (5-8-09)

**17. Composite Correction Program (CCP).** A systematic approach to identifying opportunities for improving the performance of water treatment and implementing changes that will capitalize on these opportunities. The CCP consists of two (2) elements: (4-5-00)

**a. Comprehensive Performance Evaluation (CPE).** A thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report. (4-5-00)

**b. Comprehensive Technical Assistance (CTA).** The implementation phase that is carried out if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA consists of follow-up to the CPE results, implementation of process control priority setting techniques, and maintaining long term involvement to systematically train staff and administrators. (4-5-00)

**18. Compositing of Samples.** The mixing of up to five (5) samples by the laboratory. (4-5-00)

**19. Confining Layer.** A nearly impermeable subsurface stratum which is located adjacent to one (1) or more aquifers and does not yield a significant quantity of water to a well. (5-3-03)

**20. Confirmation Sample.** A sample of water taken from the same point in the system as the original sample and at a time as soon as possible after the original sample was taken. (12-10-92)

**21. Connection.** Each structure, facility, or ~~single family residence~~ **premises** which is connected to a water system, and which is or could be used for domestic purposes, is considered a single connection. A single family residence is considered to be a premises. Multi-family dwellings and apartment, condominium, and office complexes are considered single connections



unless individual units are billed separately for water by the water system, in which case each such unit shall be considered a single connection. ~~(10-1-93)~~( )

**22. Consecutive System.** A public water system that receives some or all of its finished water from one (1) or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one (1) or more consecutive systems. (4-2-08)

**23. Consumer.** Any person served by a public water system. (12-10-92)

**24. Consumer Confidence Report (CCR).** An annual report that community water systems must deliver to their customers. The reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. (4-5-00)

**25. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (12-10-92)

**26. Cross Connection.** Any actual or potential connection or piping arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable water system used water, water from any source other than an approved public water system, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. Cross connections include bypass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices which, or because of which "backflow" can or may occur. (10-1-93)

**27. Dead End Main.** A distribution main of any diameter and length that does not loop back into the distribution system. (3-30-07)

**28. Dead Storage.** Storage that is either not available for use in the system or can provide only substandard flows and pressures. See also the definition of Components of Finished Water Storage in these rules. (5-8-09)

**29. Department.** The Idaho Department of Environmental Quality. (12-10-92)

**30. Director.** The Director of the Department of Environmental Quality or his designee. (12-10-92)

**31. Disinfection.** Introduction of chlorine or other agent or process approved by the Department, in sufficient concentration or dosage, and for the time required to kill or inactivate pathogenic and indicator organisms. (3-30-07)

**32. Disinfection Profile.** A summary of daily Giardia lamblia inactivation through the drinking water treatment plant. The procedure for developing a disinfection profile is contained in 40 CFR 141.172 and 40 CFR 141.530-141.536. (5-3-03)

**33. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), treatment facility(ies), or a combination of

source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (5-8-09)

**34. Drinking Water.** Means “water for human consumption.” (3-30-07)

**35. Drinking Water System.** All mains, pipes, and structures through which water is obtained and distributed, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use. (12-10-92)

**36. Dual Sample Set.** A set of two (2) samples collected at the same time and same location, with one (1) sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an Initial Distribution System Evaluation (40 CFR Part 141, Subpart U) and for determining compliance with the TTHM and HAA5 MCLs under the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V). (4-2-08)

**37. DWIMS.** Idaho Department of Environmental Quality Drinking Water Information Management System. Replaced by SDWISS April 2001. (3-15-02)

**38. Effective Storage.** Effective storage is all storage other than dead storage and is made up of the additive components described in Paragraphs c. through f. of the definition Components of Finished Water Storage in these rules. (5-8-09)

**39. Enhanced Coagulation.** The addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment. Conventional filtration treatment is defined in 40 CFR 141.2. (5-3-03)

**40. Enhanced Softening.** The improved removal of disinfection byproduct precursors by precipitative softening. (4-5-00)

**41. Equalization Storage.** Storage of finished water in sufficient quantity to compensate for the difference between a water system’s maximum pumping capacity and peak hour demand. See also the definition of Components of Finished Water Storage in these rules. (5-8-09)

**42. Equivalent Dwelling Unit (EDU).** A unit of measure that standardizes all land use types (housing, retail, office, etc.) to the level of demand created by a single-family detached housing unit within a water system. The demand for one (1) equivalent dwelling unit is equivalent to the amount of water provided to the average single-family detached housing unit within a water system. For example, a business designed to use three (3) times as much water as an average single-family detached housing unit would have a demand of three (3) equivalent dwelling units. (5-8-09)

**43. Exemption.** A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only if the system demonstrates to the satisfaction of the Department that the system cannot comply due to compelling factors and the deferment does not cause an unreasonable risk to public health. (12-10-92)

**44. Facility Plan.** The facility plan for a public drinking water system describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for infrastructure and includes a plan for the future of the system/facility, including upgrades and additions. It is usually updated on a regular basis due to anticipated or unanticipated growth patterns, regulatory requirements, or other infrastructure needs. A facility plan is sometimes referred to as a master plan or facilities planning study. In general, a facility plan is an overall system-wide plan as opposed to a project specific plan. (3-30-07)

**45. Facility Standards and Design Standards.** Facility standards and design standards are described in Sections 500 through 552 of these rules. Facility and design standards found in Sections 500 through 552 of these rules must be followed in the planning, design, construction, and review of public drinking water facilities. (3-30-07)

**46. Fee Assessment.** A charge assessed on public drinking water systems based on a rate structure calculated by system size. (10-1-93)

**47. Filter Profile.** A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed. (4-5-00)

**48. Finished Water.** Water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals). (4-2-08)

**49. Finished Water Storage Structures or Facilities.** Finished water storage structures or facilities are defined as: (5-8-09)

**a.** Above-ground storage structure or facility. A finished water storage structure or facility with a bottom elevation above normal ground surface. (5-8-09)

**b.** Ground-level storage structure or facility. A finished water storage structure or facility with a bottom elevation at normal ground surface. (5-8-09)

**c.** Partially buried storage structure or facility. A finished water storage structure or facility with a bottom elevation below normal ground surface and any portion of the structure or facility above normal ground surface. (5-8-09)

**d.** Below-ground storage structure or facility. A finished water storage structure or facility with a bottom elevation and top elevation below normal ground surface. (5-8-09)

**50. Fire Flow Capacity.** The water system capacity, in addition to maximum day demand, that is available for fire fighting purposes within the water system or distribution system pressure zone. Adequacy of the water system fire flow capacity is determined by the local fire authority. (3-30-07)

**51. Fire Suppression Storage.** The water needed to support fire flow in those systems that provide it. See also the definition of Components of Finished Water Storage in these rules. (5-8-09)

**52. Fixture Protection.** The practice of installing backflow prevention assemblies or devices to isolate one (1) or more cross connections within a customer's facility. (5-8-09)

**53. Flowing Stream.** As used in the Long Term 2 Enhanced Surface Water Treatment Rule (40 CFR Part 141, Subpart W), this term means a course of running water flowing in a definite channel. (4-2-08)

**54. GAC10.** Granular activated carbon filter beds with an empty bed contact time of ten (10) minutes based on average day demand and a carbon reactivation frequency of every one hundred eighty (180) days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with MCLs established in the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V) shall be one hundred twenty (120) days. (5-8-09)

**55. GAC20.** Granular activated carbon filter beds with an empty-bed contact time of twenty (20) minutes based on average daily flow and a carbon reactivation frequency of every two hundred forty (240) days. (4-2-08)

**56. Ground Water System.** A public water system which is supplied exclusively by a ground water source or sources. (12-10-92)

**57. Ground Water Under the Direct Influence of Surface Water.** Any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality, documentation of well construction characteristics and geology with field evaluation, or a combination of water quality and documentation. (5-8-09)

**58. Haloacetic Acids (Five) (HAA5).** The sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid) rounded to two (2) significant figures after addition. (4-5-00)

**59. Health Hazards.** Any condition which creates, or may create, a danger to the consumer's health. Health hazards may consist of, but are not limited to, design, construction, operational, structural, collection, storage, distribution, monitoring, treatment or water quality elements of a public water system. See also the definition of Significant Deficiency, which refers to a health hazard identified during a sanitary survey. (5-3-03)

**60. Inorganic.** Generally refers to compounds that do not contain carbon and

hydrogen. (12-10-92)

**61. Internal or In-Plant Isolation.** The practice of installing backflow prevention assemblies to protect an area within a water customer's structure, facility, or premises from contaminating another part of the structure, facility, or premises. ~~(5-8-09)~~( )

**62. Laboratory Certification Reciprocity.** Acceptance of a laboratory certification made by another state. Laboratory reciprocity may be granted to laboratories outside of Idaho after application, proof of home state certification, and EPA performance evaluation results are submitted and reviewed. Reciprocity must be renewed after a time specified by the Idaho Laboratory Certification Officer to remain valid. (4-5-00)

**63. Lake/Reservoir.** As used in the Long Term 2 Enhanced Surface Water Treatment Rule (40 CFR Part 141, Subpart W), this term means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow. (4-2-08)

**64. License.** A physical document issued by the Idaho Bureau of Occupational Licenses certifying that an individual has met the appropriate qualifications and has been granted the authority to practice in Idaho under the provisions of Chapter 24, Title 54, Idaho Code. (4-6-05)

**65. Locational Running Annual Average (LRAA).** The average of sample analytical results for samples taken at a particular monitoring location during the previous four (4) calendar quarters, as set forth in the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V). (4-2-08)

**66. Log.** Logarithm to the base ten (10). (12-10-92)

**67. Material Deviation.** A change from the design plans that significantly alters the type or location of facilities, requires engineering judgment to design, or impacts the public safety or welfare. (4-11-06)

**68. Material Modification.** Those modifications of an existing public water system that are intended to increase system capacity or alter the methods or processes employed. Any project that adds source water to a system, increases the pumping capacity of a system, increases the potential population served by the system or the number of service connections within the system, adds new or alters existing drinking water system components, or affects the water demand of the system is considered to be increasing system capacity or altering the methods or processes employed. Maintenance and repair performed on the system and the replacement of valves, pumps, or other similar items with new items of the same size and type are not considered a material modification. (5-8-09)

**69. Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (3-30-07)

**70. Maximum Day Demand.** The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest for the design year. See also the

definition of Water Demand in these rules. (5-8-09)

**71. Maximum Pumping Capacity.** The pumping capacity with the largest source or pump out of service. (5-8-09)

**72. Maximum Residual Disinfectant Level (MRDL).** A level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a public water system is in compliance with the MRDL, when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a public water system is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in 40 CFR 141.65, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections. (4-5-00)

**73. Maximum Residual Disinfectant Level Goal (MRDLG).** The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants. (4-5-00)

**74. Membrane Filtration.** A pressure or vacuum driven separation process in which particulate matter larger than one (1) micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis. (4-2-08)

**75. Method Detection Limit (MDL).** The lowest concentration which can be determined to be greater than zero with ninety-nine percent (99%) confidence, for a particular analytical method. (12-10-92)

**76. New System.** Any water system that meets, for the first time, the definition of a public water system provided in Section 1401 of the federal Safe Drinking Water Act (42 U.S.C. Section 300f). This includes systems that are entirely new construction and previously unregulated systems that are expanding. (4-5-00)

**77. Noncommunity Water System.** A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. See also the definition of a Public Drinking Water System in these rules. (5-8-09)

**78. Non-Potable Mains.** The pipelines that collect and convey non-potable discharges from or to multiple service connections. (4-11-06)

**79. Non-Potable Services.** The pipelines that convey non-potable discharges from individual facilities to a connection with the non-potable main. This term also refers to pipelines that convey non-potable water from a pressurized irrigation system, reclaimed wastewater system, and other non-potable systems to individual consumers. (4-11-06)

**80. Nontransient Noncommunity Water System.** A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. See also the definition of a Public Drinking Water System in these rules. (5-8-09)

**81. Nuclear Facility.** Factories, processing plants or other installations in which fissionable material is processed, nuclear reactors are operated, or spent (used) fuel material is processed, or stored. (12-10-92)

**82. Operating Shift.** That period of time during which water system operator decisions that affect public health are necessary for proper operation of the system. (4-5-00)

**83. Operational Storage.** Operational storage supplies water when, under normal conditions, the sources are off. This component is the larger of the volume required to prevent excess pump cycling and ensure that the following volume components are full and ready for use when needed or the volume needed to compensate for the sensitivity of the water level sensors. See also the definition of Components of Finished Water Storage in these rules. (5-8-09)

**84. Owner/Purveyor of Water/Supplier of Water.** The person, company, corporation, association, or other organizational entity which holds legal title to the public water system, who provides, or intends to provide, drinking water to the customers, and who is ultimately responsible for the public water system operation. (5-8-09)

**85. Peak Hour Demand.** The highest hourly flow, excluding fire flow, that a water system or distribution system pressure zone is likely to experience in the design year. See also the definition of Water Demand in these rules. (5-8-09)

**86. Person.** A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (12-10-92)

**87. Pesticides.** Substances which meet the criteria for regulation pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and any regulations adopted pursuant to FIFRA. For example, pesticides include, but are not limited to insecticides, fungicides, rodenticides, herbicides, and algaecides. (12-10-92)

**88. Plant.** A physical facility where drinking water or wastewater is treated or processed. (3-30-07)

**89. Plant Intake.** The works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant. (4-2-08)

**90. Point of Use (POU) Treatment Device.** A treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap. (3-30-07)

**91. Point of Use (POU) Treatment System.** A collection of POU treatment devices. (3-30-07)

**92. Potable Mains.** Pipelines that deliver potable water to multiple service connections. (3-30-07)

**93. Potable Services.** Pipelines that convey potable water from a connection to the potable water main to individual consumers. (3-30-07)

**94. Preliminary Engineering Report.** The preliminary engineering report for a public drinking water system facility is a report that addresses specific portions of the system or facility for which modifications are being designed. Modifications may include, but are not limited to, significant changes to existing processes or facilities, system expansion, addition of treatment, or installation of other processes and facilities. This report addresses specific purpose and scope, design requirements, alternative solutions, costs, operation and maintenance requirements, and other requirements as described in Section 503. Preliminary engineering reports are generally project specific as opposed to an overall system-wide plan, such as a facility plan. However, the preliminary engineering report shall describe modifications to the facility plan that may be required as a result of the proposed project. (3-30-07)

**95. Premises Isolation or Containment.** The practice of separating the customer's structure, facility, or premises from the purveyor's system by means of a backflow prevention assembly installed on the service line before any distribution takes place. ~~(5-8-09)~~( )

**96. Presedimentation.** A preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant. (4-2-08)

**97. Public Notice.** The notification of public water system consumers of information pertaining to that water system including information regarding water quality or compliance status of the water system. (12-10-92)

**98. Public Drinking Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system" as further defined as: (5-8-09)



**a.** Community water system. A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. (5-8-09)

**b.** Noncommunity water system. A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. (5-8-09)

**c.** Nontransient noncommunity water system. A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (5-8-09)

**d.** Transient noncommunity public water system. A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. (5-8-09)

**99. Public Water System/Water System/System.** Means “public drinking water system.” (4-5-00)

**100. Pump House.** An above-grade structure containing important water system components, such as a well, hydropneumatic tank, booster pump, pump controls, flow meter, well discharge line, or a treatment unit. Pump houses are often called well houses in common usage, even though in modern construction these structures may not contain either a well or a pump. These terms are used interchangeably in national standards and trade publications. (3-30-07)

**101. Qualified Licensed Professional Engineer (QLPE).** A professional engineer licensed by the state of Idaho; qualified by education or experience in the specific technical fields involved in these rules; and retained or employed by a city, county, quasi-municipal corporation, or regulated public utility for the purposes of plan and specification review. (5-8-09)

**102. Quasi-Municipal Corporation.** A public entity, other than community government, created or authorized by the legislature to aid the state in, or to take charge of, some public or state work for the general welfare. For the purpose of these rules, this term refers to drinking water districts. (4-11-06)

**103. Regulated Public Utility.** For the purpose of these rules, any public water system that falls under the jurisdiction of the Idaho Public Utilities Commission and is subject to the rules thereof. (3-30-07)

**104. Repeat Compliance Period.** Any subsequent compliance period after the initial compliance period. (12-10-92)

**105. Responsible Charge (RC).** Responsible Charge means active, daily on-site or on-call responsibility for the performance of operations or active, on-going, on-site, or on-call direction of employees and assistants. (5-8-09)

**106. Responsible Charge Operator.** An operator of a public drinking water system,

designated by the system owner, who holds a valid license at a class equal to or greater than the drinking water system classification, who is in responsible charge of the public drinking water system. (4-6-05)

**107. Reviewing Authority.** For those projects requiring preconstruction approval by the Department, the Department is the reviewing authority. For those projects allowing for preconstruction approval by others, pursuant to Subsection 504.03.b. of these rules, the qualified Idaho licensed professional engineer (QLPE) is also the reviewing authority. (5-8-09)

**108. Sampling Point.** The location in a public water system from which a sample is drawn. (12-10-92)

**109. Sanitary Defects.** Any faulty structural condition which may allow the water supply to become contaminated. (12-10-92)

**110. Sanitary Survey.** An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. The sanitary survey will include, but is not limited to the following elements: (4-5-00)

- a. Source; (4-5-00)
- b. Treatment; (4-5-00)
- c. Distribution system; (4-5-00)
- d. Finished water storage; (4-5-00)
- e. Pumps, pump facilities, and controls; (4-5-00)
- f. Monitoring and reporting and data verification; (4-5-00)
- g. System management and operation; and (4-5-00)
- h. Operator compliance with state requirements. (4-5-00)

**111. SDWIS-State.** An acronym that stands for “Safe Drinking Water Information System-State Version.” It is a software package developed under contract to the U.S. Environmental Protection Agency and used by a majority of U.S. states to collect, maintain, and report data about regulated public water systems. See also the definition of DWIMS. (5-3-03)

**112. Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (3-30-07)

**113. Significant Deficiency.** As identified during a sanitary survey, any defect in a system’s design, operation, maintenance, or administration, as well as any failure or malfunction

of any system component, that the Department or its agent determines to cause, or have potential to cause, risk to health or safety, or that could affect the reliable delivery of safe drinking water. See also the definition of Health Hazards. (5-3-03)

**114. Simple Water Main Extension.** New or replacement water main(s) that require plan and specification review by a qualified licensed professional engineer (QLPE) or by the Department per these rules and that is connected to existing water main facilities and does not require the addition of system components designed to control quantity or pressure, including, but not limited to, booster stations, new sources, pressure reducing stations, or reservoirs; and continues to provide the pressure and quantity requirements of Subsection 552.01. ~~(5-8-09)~~( )

**115. Special Irrigation District.** An irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in Section 1401(4)(B)(i)(II) or (III) of the Safe Drinking Water Act. (4-6-05)

**116. Spring.** A source of water which flows from a laterally percolating water table's intersection with the surface or from a geological fault that allows the flow of water from an artesian aquifer. (12-10-92)

**117. Standby Storage.** Standby storage provides a measure of reliability or safety factor should sources fail or when unusual conditions impose higher than anticipated demands. See also the definition of Components of Finished Water Storage in these rules. (5-8-09)

**118. Substantially Modified.** The Department shall consider a public water system to be substantially modified when, as the result of one (1) or more projects, there is a combined increase of twenty-five percent (25%) or more above the system's existing configuration in the population served or number of service connections, the total length of transmission and distribution water mains, and the peak or average water demand. (5-8-09)

**119. Substitute Responsible Charge Operator.** An operator of a public drinking water system who holds a valid license at a class equal to or greater than the drinking water system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (4-6-05)

**120. Surface Water System.** A public water system which is supplied by one (1) or more surface water sources or ground water sources under the direct influence of surface water. Also called subpart H systems in applicable sections of 40 CFR Part 141. (4-5-00)

**121. SUVA (Specific Ultraviolet Absorption).** SUVA means Specific Ultraviolet Absorption at two hundred fifty-four (254) nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wave length of two hundred fifty-four (254) nm (UV254) (in m=1) by its concentration of dissolved organic carbon (DOC) (in mg/l). (3-30-07)

**122. Total Organic Carbon (TOC).** Total organic carbon in mg/l measured using heat,

oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two (2) significant figures. (4-5-00)

**123. Total Trihalomethanes (TTHM).** The sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two (2) significant figures. (4-2-08)

**124. Transient Noncommunity Public Water System.** A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. See also the definition of a Public Drinking Water System in these rules. (5-8-09)

**125. Treatment Facility.** Any place(s) where a public drinking water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system. (4-5-00)

**126. Turbidity.** A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. (12-10-92)

**127. Two-Stage Lime Softening.** A process in which chemical addition and hardness precipitation occur in each of two (2) distinct unit clarification processes in series prior to filtration. (4-2-08)

**128. Uncovered Finished Water Storage Facility.** A tank, reservoir, or other facility that is directly open to the atmosphere and used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection. (4-2-08)

**129. Unregulated Contaminant.** Any substance that may affect the quality of water but for which a maximum contaminant level or treatment technique has not been established. (12-10-92)

**130. Use Assessment.** For the purpose of obtaining a waiver from certain monitoring requirements, a use assessment is an evaluation as to whether synthetic organic contaminants are being or have been used, manufactured, transported, stored, or disposed of in the watershed for surface water or the zone of influence for ground water. (5-8-09)

**131. Variance.** A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only when the system demonstrates to the satisfaction of the Department that the raw water characteristics prevent compliance with the MCL or requirement after installation of the best available technology or treatment technique and the deferment does not cause an unreasonable risk to public health. (12-10-92)

**132. Very Small Public Drinking Water System.** A Community or Nontransient Noncommunity Public Water System that serves five hundred (500) persons or less and has no

treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). (4-5-00)

**133. Volatile Organic Chemicals (VOCs).** VOCs are lightweight organic compounds that vaporize or evaporate easily. (10-1-93)

**134. Vulnerability Assessment.** A determination of the risk of future contamination of a public drinking water supply. (12-10-92)

**135. Waiver.** (12-10-92)

**a.** For the purposes of these rules, except Sections 500 through 552, “waiver” means the Department approval of a temporary reduction in sampling requirements for a particular contaminant. (3-30-07)

**b.** For purposes of Sections 500 through 552, “waiver” means a dismissal of any requirement of compliance. (3-30-07)

**c.** For the purposes of Section 010, “waiver” means the deferral of a fee assessment for a public drinking water system. (10-1-93)

**136. Wastewater.** ~~Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present.~~ **Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. See IDAPA 58.01.16, “Wastewater Rules,” for additional information.** (~~3-30-07~~)( )

**137. Water for Human Consumption.** Water that is used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In common usage, the terms “culinary water,” “drinking water,” and “potable water” are frequently used as synonyms. (5-3-03)

**138. Water Demand.** The volume of water requested by system users to satisfy their needs. Water demand can be further categorized as: (5-8-09)

**a.** Average day demand. The volume of water used by a system on an average day based on a one (1) year period. (5-8-09)

**b.** Maximum day demand. The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest for the design year. (5-8-09)

**c.** Peak hour demand. The highest hourly flow, excluding fire flow, that a water system or distribution system pressure zone is likely to experience in the design year. (5-8-09)

**139. Water Main.** A pipe within a public water system which is under the control of the system operator and conveys water to two (2) or more service connections or conveys water to a fire hydrant. The collection of water mains within a given water supply is called the distribution system. (5-8-09)

**140. Watershed.** The land area from which water flows into a stream or other body of water which drains the area. (3-30-07)

**141. Wholesale System.** A public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one (1) or more consecutive systems. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. MONITORING AND ANALYTICAL REQUIREMENTS.**

**01. Microbiological Contaminant Sampling and Analytical Requirements.** (10-1-93)

**a.** 40 CFR 141.21, revised as of July 1, ~~2007~~ 2010, is herein incorporated by reference. (~~5-8-09~~)(    )

**b.** The Department may reduce the total coliform monitoring frequency for community water systems serving twenty-five (25) to one thousand (1000) persons, as specified in 40 CFR 141.21(a)(2) and Subsection 100.01. The Department may allow community water systems serving twenty-five (25) to one thousand (1000) persons to reduce the total coliform monitoring frequency to once per quarter when; (12-10-92)

**i.** The system submits a written request to the Department in advance of the requirement; and (12-10-92)

**ii.** There has been no history of total coliform contamination in its current configuration; and (10-1-93)

**iii.** The system has been in compliance with the total coliform monitoring requirements for the last three (3) years; and (12-10-92)

**iv.** A sanitary survey has been conducted within the past five (5) years which indicates to the Department that there are no deficiencies which could affect microbial quality; and (12-10-92)

**v.** The system uses only a ground water source that is protected. (12-10-92)

**c.** The Department may reduce the total coliform monitoring frequency for

noncommunity water systems serving less than one thousand (1000) persons as specified in 40 CFR 141.21(a)(3)(i) and Subsection 100.01 of this rule. The Department may allow noncommunity water systems serving less than one thousand (1000) persons to reduce the total coliform monitoring frequency to once per year when; (12-10-92)

i. The system submits a written request to the Department in advance of the requirement; and (12-10-92)

ii. No coliforms have been detected in the last three (3) years of monitoring; and (12-10-92)

iii. The system has been in compliance with the total coliform monitoring requirements for the last three (3) years; and (12-10-92)

iv. A sanitary survey has been conducted within the past five (5) years which indicates to the Department that there are no deficiencies which could affect microbial quality; and (12-10-92)

v. The system uses only a ground water source that is protected. (12-10-92)

**d.** The Department may reduce the total coliform monitoring frequency for noncommunity water systems serving more than one thousand (1000) persons during any month the system serves one thousand (1000) persons or fewer as specified in 40 CFR 141.21(a)(3)(ii) and Subsection 100.01. The Department will allow noncommunity water systems serving more than one thousand (1000) persons to reduce the total coliform monitoring frequency for any month the system serves one thousand (1000) persons or fewer, down to a minimum of one (1) sample per year, provided; (10-1-93)

i. The system submits a written request to the Department in advance of the requirement; and (12-10-92)

ii. No coliforms have been detected in the last three (3) years of monitoring; and (12-10-92)

iii. The system has been in compliance with the total coliform monitoring requirements for the last three (3) years; and (12-10-92)

iv. A sanitary survey has been conducted within the past five (5) years which indicates that there are no deficiencies which could effect microbial quality; and (12-10-92)

v. The system uses only a ground water source that is protected. (12-10-92)

**e.** A system must collect repeat samples within twenty-four (24) hours of notification of positive results as specified in 40 CFR 141.21(b) and Subsection 100.01. The Department may allow a system to delay collection of repeat samples if the system; (12-10-92)

i. Identifies the cause of the contamination; (12-10-92)

- ii. Is making progress towards correcting the problem; (12-10-92)
  - iii. Submits a written request to delay collecting repeat samples and a written statement admitting an acute MCL violation; (12-10-92)
  - iv. Follows public notification requirements specified under 40 CFR Part 141, Subpart Q, revised as of July 1, 2006, for Tier 1 MCL violations including notice for consumers to boil their water; (4-2-08)
  - v. Continues to collect the regularly scheduled number of routine samples; (12-10-92)
  - vi. Collects all repeat samples immediately following correction of the problem; and (12-10-92)
  - vii. Collects five (5) routine samples during the month following the end of the violation as required under 40 CFR 141.21 (b)(5), unless waived as allowed under that paragraph. (12-10-92)
- 02. Turbidity Sampling and Analytical Requirements.** 40 CFR 141.22, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- 03. Inorganic Chemical Sampling and Analytical Requirements.** 40 CFR 141.23, revised as of July 1, ~~2007~~ 2010, is herein incorporated by reference. ~~(5-8-09)~~( )
- 04. Organic Chemicals Other Than Total Trihalomethanes, Sampling and Analytical Requirements.** 40 CFR 141.24, revised as of July 1, ~~2007~~ 2010, is herein incorporated by reference. ~~(5-8-09)~~( )
- 05. Analytical Methods for Radioactivity.** 40 CFR 141.25, revised as of July 1, ~~2007~~ 2010, is herein incorporated by reference. ~~(3-15-02)~~( )
- 06. Monitoring Frequency and Compliance Requirements for Radioactivity in Community Water Systems.** 40CFR 141.26, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- 07. Monitoring Waivers ~~and Vulnerability Assessments~~.** 40 CFR 141.23(b) 141.23(c), 141.24(f), 141.24(h), revised as of July 1, 2009, are herein incorporated by reference. ~~(10-1-93)~~( )
- a. Waivers from sampling requirements in Subsections 100.03, 100.04, 200.01, 503.~~H~~03.k.i. and 503.~~I~~03.k.ii. may be available to all systems for all contaminants except nitrate, nitrite, arsenic and trihalomethanes disinfection byproducts and are based upon a vulnerability assessment, use assessment, the analytical results of previous sampling, or some combination of vulnerability assessment, use assessment, and analytical results. ~~(5-8-09)~~( )
  - b. There are two (2) general types of monitoring waivers: (12-10-92)



- i. Waivers based exclusively upon previous analytical data (12-10-92)
- ii. Waivers based on a use or vulnerability assessment. (12-10-92)
- c. Waivers are to be made by the Department on a contaminant specific basis and must be in writing. (12-10-92)
- d. Vulnerability assessments may be conducted by the Department, the water system, or a third party organization. The Department shall approve or disapprove all vulnerability assessments in writing. (12-10-92)
- e. Water systems which do not receive waivers shall sample at the required initial and repeat monitoring frequencies. (12-10-92)
- f. If a system elects to request a waiver from monitoring, it shall do so in writing at least sixty (60) days prior to the required monitoring deadline date. (10-1-93)

**08. Initial Monitoring Schedule.** In addition to the requirements specified in 40 CFR 141.23, revised as of July 1, 2004, 40 CFR 141.24, revised as of July 1, 2004, and 40 CFR 141.40, revised as of July 1, 2001, initial monitoring must be completed according to the following schedule unless otherwise specified by the Department: (4-6-05)

- a. Public water systems serving more than one hundred (100) people must conduct initial monitoring before January 1, 1995 except that: (10-1-93)
  - i. Initial monitoring for nitrate and nitrite must be completed before January 1, 1994 for all surface water sources serving transient noncommunity public water systems and for all ground water sources serving any public water system. (10-1-93)
  - ii. Initial monitoring for nitrate and nitrite must be completed before April 1, 1993 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)
  - iii. Initial monitoring required under 40 CFR 141.23(c) must be completed before January 1, 1994 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)
- b. Public water systems serving one hundred (100) or less people must conduct initial monitoring before January 1, 1996 except that: (10-1-93)
  - i. Initial monitoring for nitrate and nitrite must be completed before January 1, 1994 for all surface water sources serving transient noncommunity public water systems and for all ground water sources serving a public water system. (10-1-93)
  - ii. Initial monitoring for nitrate and nitrite must be completed before April 1, 1993 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

iii. Initial monitoring required under 40 CFR 141.23(c) must be completed before January 1, 1994 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

**09. Alternate Analytical Techniques.** 40 CFR 141.27 is herein incorporated by reference. (10-1-93)

**10. Approved Laboratories.** 40 CFR 141.28, revised as of July 1, 2007, is herein incorporated by reference. All analyses conducted pursuant to these rules, except those listed below, shall be performed in laboratories certified or granted reciprocity by the Idaho Department of Health and Welfare, Bureau of Laboratories, as provided in IDAPA 16.02.13, "Rules Governing Certification of Idaho Water Quality Laboratories." The following analyses may be performed by any person acceptable to the Department of Environmental Quality: (5-8-09)

- a. pH; (12-10-92)
- b. Turbidity (Nephelometric method only); (12-10-92)
- c. Daily analysis for fluoride; (12-10-92)
- d. Temperature; (5-8-09)
- e. Disinfectant residuals, except ozone, which shall be analyzed using the Indigo Method or an acceptable automated method pursuant to Subsection 300.05.c.; (5-8-09)
- f. Alkalinity; (5-8-09)
- g. Calcium; (5-8-09)
- h. Conductivity; (5-8-09)
- i. Silica; and (5-8-09)
- j. Orthophosphate. (5-8-09)

**11. Consecutive Water System.** 40 CFR 141.29 is herein incorporated by reference. (10-1-93)

**12. Total Trihalomethane Sampling, Analytical and Other Requirements.** 40 CFR ~~Part 141.30~~, Subpart L, revised as of July 1, ~~2007~~ 2010, is herein incorporated by reference. ~~(5-8-09)~~(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. FILTRATION AND DISINFECTION.**

**01. General Requirements.** 40 CFR 141.70, revised as of July 1, 2002, is herein incorporated by reference. Each public water system using a surface water source or ground water source directly influenced by surface water shall be operated by personnel, as specified in Sections 553 and 554, who have met state requirements for licensing of water system operators. (4-6-05)

~~02. **Criteria for Avoiding Filtration.** 40 CFR 141.71, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)~~

**02. Filtration.** 40 CFR 141.73, revised as of July 1, 2002, is herein incorporated by reference. ( )

**a.** Each system which provides filtration treatment shall submit engineering evaluations, other documentation, or some combination of engineering evaluations and other documentation as required by the Department to demonstrate ongoing compliance with these rules. ( )

**b.** The Department will establish filtration removal credit on a system-by-system basis. Unless otherwise demonstrated to the satisfaction of the Department, the maximum log removal credit allowed for filtration is as follows:

<b>Maximum Log Removal</b>		
<b>Filtration Type</b>	<b>Giardia</b>	<b>Viruses</b>
Conventional	2.5	2.0
Direct	2.0	1.0
Slow sand	2.0	2.0
Diatomaceous earth	2.0	1.0
Membrane	3.0	1.0
Alternate technology	2.0	0

( )

**c.** Filtration removal credit shall be granted for filtration treatment provided the system is: ( )

**i.** Operated in accordance with the Operations Plan specified in Subsection 552.03.a.; and ( )

**ii.** The system is in compliance with the turbidity performance criteria specified under 40 CFR 141.73; and ( )

**iii.** Coagulant chemicals must be added and coagulation and flocculation unit process must be used at all times during which conventional and direct filtration treatment plants are in operation; and ( )

iv. ~~Slow sand filters are operated at a rate not to exceed one-tenth (0.1) gallons per minute per square foot; and~~ ( )

v. ~~Diatomaceous earth filters are operated at a rate not to exceed one point five (1.5) gallons per minute per square foot.~~ ( )

~~03. Criteria for Avoiding Filtration. 40 CFR 141.71, revised as of July 1, 2002, is herein incorporated by reference.~~ ( )

~~034. Disinfection. 40 CFR 141.72 is herein incorporated by reference.~~ (10-1-93)

a. In addition to the disinfection requirements in 40 CFR 141.72, each system with a surface water source or ground water source directly influenced by surface water shall maintain a minimum of at least two-tenths (0.2) parts per million of chlorine in the treated water after an actual contact time of at least thirty (30) minutes at peak hour demand before delivery to the first customer. (5-8-09)

b. The Department may allow a system to utilize automatic shut-off of water to the distribution system whenever total disinfectant residual is less than two-tenths (0.2) mg/l rather than provide redundant disinfection components and auxiliary power as required in 40 CFR 141.72(a)(2). An automatic water shut-off may be used if the system demonstrates to the satisfaction of the Department that, at all times, a minimum of twenty (20) psi pressure and adequate fire flow can be maintained in the distribution system when water delivery is shut-off to the distribution system and, at all times, minimum *Giardia lamblia* and virus inactivation removal rates can be achieved prior to the first customer. (12-10-92)

c. Each system which provides filtration treatment must provide disinfection treatment such that filtration plus disinfection provide at least ninety-nine and nine tenths percent (99.9%) inactivation/removal of *Giardia lamblia* cysts and ninety-nine and ninety-nine one hundredths percent (99.99%) inactivation/removal of viruses as specified in 40 CFR 141.72 and Section 300. However, in all cases the disinfection portion of the treatment train shall be designed to provide not less than five tenths (0.5) log *Giardia* inactivation, irrespective of the *Giardia* removal credit awarded to the filtration portion of the treatment train. (5-8-09)

~~i. Each system which provides filtration treatment shall submit engineering evaluations, other documentation, or some combination of engineering evaluations and other documentation as required by the Department to demonstrate ongoing compliance with Subsection 300.03.c.~~ (5-8-09)

~~ii. The Department will establish filtration removal credit on a system-by-system basis. Unless otherwise demonstrated to the satisfaction of the Department, the maximum log removal credit allowed for filtration is as follows:~~

<i>Maximum Log Removal</i>		
<i>Filtration Type</i>	<i>Giardia</i>	<i>Viruses</i>
<i>Conventional</i>	<i>2.5</i>	<i>2.0</i>
<i>Direct</i>	<i>2.0</i>	<i>1.0</i>
<i>Slow sand</i>	<i>2.0</i>	<i>2.0</i>
<i>Diatomaceous earth</i>	<i>2.0</i>	<i>1.0</i>
<i>Membrane</i>	<i>3.0</i>	<i>1.0</i>
<i>Alternate technology</i>	<i>2.0</i>	<i>0</i>

(5-8-09)

~~iii. Filtration removal credit shall be granted for filtration treatment provided the system is;~~ (12-10-92)

~~(1) Operated in accordance with the Operations Plan specified in Subsection 552.03.a.; and~~ (12-10-92)

~~(2) The system is in compliance with the turbidity performance criteria specified under 40 CFR 141.73; and~~ (12-10-92)

~~(3) Coagulant chemicals must be added and coagulation and flocculation unit process must be used at all times during which conventional and direct filtration treatment plants are in operation; and~~ (12-10-92)

~~(4) Slow sand filters are operated at a rate not to exceed one-tenth (0.1) gallons per minute per square foot; and~~ (12-10-92)

~~(5) Diatomaceous earth filters are operated at a rate not to exceed one and one-half (1.5) gallons per minute per square foot.~~ (12-10-92)

~~04. Filtration. 40 CFR 141.73, revised as of July 1, 2002, is herein incorporated by reference.~~ (5-3-03)

**05. Analytical and Monitoring Requirements.** 40 CFR 141.74, revised as of July 1, 1999 2010, is herein incorporated by reference. (4-5-00)(    )

**a.** Each public water system which provides filtration treatment shall monitor as follows: (12-10-92)

**i.** Each day the system is in operation, the purveyor shall determine the total level of inactivation of *Giardia lamblia* cysts and viruses achieved through disinfection based on CT99.9 values provided in 40 CFR 141.74(b)(3) (Tables 1.1 through 1.6, 2.1 and 3.1). (12-10-92)

**ii.** At least once per day, the system shall monitor the following parameters to

determine the total inactivation ratio achieved through disinfection: (12-10-92)

(1) Temperature of the disinfected water at each residual disinfectant concentration sampling point; and (12-10-92)

(2) If using chlorine, the pH of the disinfected water at each chlorine residual sampling point. (12-10-92)

(3) The disinfectant contact time, "T," must be determined each day during peak hour demand. Disinfectant contact time, "T," in pipelines used for *Giardia lamblia* and virus inactivation shall be calculated by dividing the internal volume of the pipe by the peak hour flow rate through that pipe. Disinfectant contact time, "T," for all other system components used for *Giardia lamblia* and virus inactivation shall be determined by tracer studies or equivalent methods. (5-8-09)

(4) The residual disinfectant concentrations at each residual disinfectant sampling point at or before the first customer, must be determined each day during peak hour demand, or at other times approved by the Department. (5-8-09)

iii. The purveyor may demonstrate to the Department, based on a Department approved on-site disinfection challenge study protocol, that the system is achieving disinfection requirements specified in Subsection 300.03 utilizing CT99.9 values other than those specified in 40 CFR 141.74(b)(3) (Tables 2.1 and 3.1) for ozone, chlorine dioxide, and chloramine. (10-1-93)

iv. The total inactivation ratio shall be calculated as follows: (12-10-92)

(1) If the system applies disinfectant at only one (1) point, the system shall determine the total inactivation ratio by either of the two (2) following methods: (12-10-92)

(a) One inactivation ratio (CTcalc/CT99.9) is determined at/or before the first customer during peak hour demand; or (5-8-09)

(b) Sequential inactivation ratios are calculated between the point of disinfectant application and a point at or before the first customer during peak hour demand. The following method must be used to calculate the total inactivation ratio: (5-8-09)

(i) Step 1: Determine (CTcalc/CT99.9) for each sequence. (12-10-92)

(ii) Step 2: Add the (CTcalc/CT99.9) values for all sequences. The result is the total inactivation ratio. (12-10-92)

(2) If the system uses more than one point of disinfectant application at or before the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hour demand. The sum of the (CTcalc/CT99.9) values from all sequences is the total inactivation ratio. (CTcalc/CT99.9) must be determined by the methods described in 40 CFR 141.74(b)(4)(i)(B). (5-8-09)

v. Log removal credit for disinfection shall be determined by multiplying the total

inactivation ratio by three (3). (12-10-92)

vi. The Department may reduce the CT monitoring requirements specified under Section 300, for any system which demonstrates that the required inactivation levels are consistently exceeded. Reduced CT monitoring shall be allowed only where the reduction in monitoring will not endanger the health of consumers served by the water system. (12-10-92)

**b.** Residual disinfectant concentrations for ozone must be measured using the Indigo Method, or automated methods may be used if approved as provided for in 40 CFR 141.74(a)(5) and Subsection 300.05. Automated methods for ozone measurement must be approved by the Department. (4-6-05)

**c.** As provided for in 40 CFR 141.74(b), the Department may specify interim monitoring requirements for systems notified by the Department or U.S. Environmental Protection Agency that filtration treatment must be installed. Until filtration is installed, systems shall conduct monitoring for turbidity and disinfectant residuals as follows unless otherwise specified by the Departments; (12-10-92)

i. Disinfectant residual concentrations entering the distribution system shall be measured at the following minimum frequencies, and samples must be taken at evenly spaced intervals throughout the workday.

Minimum Frequencies	
Population	Samples/day
Less than 500	1
501 - 1000	2
1,001 - 2,500	3
Greater than 2501	4

(12-10-92)

ii. Turbidity shall be measured at least once per day at the entry point to the distribution system. (12-10-92)

iii. The Department may, at its discretion, reduce the turbidity monitoring frequency for any noncommunity system which demonstrates to the satisfaction of the Department: (12-10-92)

(1) A free chlorine residual of two-tenths (0.2) part per million is maintained throughout the distribution system; (12-10-92)

(2) The water source is well protected; (12-10-92)

(3) The total coliform MCL is not exceeded; and (12-10-92)

(4) No significant health risk is present. (12-10-92)

**d.** The Department may allow systems with surface water sources or ground water sources under the direct influence of surface water, to substitute continuous turbidity monitoring for grab sample monitoring as specified in 40 CFR 141.74(b)(2) and 40 CFR 141.74(c)(1) and Subsection 300.05. The Department may allow continuous turbidity monitoring provided the continuous turbidimeter is operated, maintained, standardized and calibrated per the manufacturers recommendations. For purposes of determining compliance with turbidity performance criteria, discrete values must be recorded every four (4) hours water is supplied to the distribution system. (10-1-93)

**e.** The Department may allow systems using both a surface water source(s), or ground water source(s) under the direct influence of surface water, and one (1) or more ground water sources, to measure disinfectant residual at points other than the total coliform sampling points, as specified in 40 CFR 141.74(b)(6)(i) and 40 CFR 141.74(c)(3)(i) and Subsection 300.05. The Department may allow alternate sampling points provided the system submits an acceptable alternate monitoring plan to the Department in advance of the monitoring requirement. (10-1-93)

**f.** The Department may allow a reduced turbidity monitoring frequency for systems using slow sand filtration or technology other than conventional, direct, or diatomaceous earth filtration, as specified in 40 CFR 141.74(c)(1) and Subsection 300.05. To be considered for a reduced turbidity monitoring frequency, a system must submit a written request to the Department in advance of the monitoring requirement. (12-10-92)

**06. Reporting and Recordkeeping.** 40 CFR 141.75, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

**a.** As provided in 40 CFR 141.75(a), revised as of July 1, 2001, and Section 300, the Department may establish interim reporting requirements for systems notified by the Department or U.S. Environmental Protection Agency that filtration treatment must be installed as specified in 40 CFR 141.75(a), revised as of July 1, 2001, and as referred to in Subsection 300.06. Until filtration treatment is installed, systems required to install filtration treatment shall report as follows: (3-15-02)

**i.** The purveyor shall immediately report to the Department via telephone or other equally rapid means, but no later than the end of the next business day, the following information: (12-10-92)

(1) The occurrence of a waterborne disease outbreak potentially attributable to that water system; (12-10-92)

(2) Any turbidity measurement which exceeds five (5) NTU; and (12-10-92)

(3) Any result indicating that the disinfectant residual concentration entering the distribution system is below two-tenths (0.2) mg/l free chlorine. (12-10-92)

**ii.** The purveyor shall report to the Department within ten (10) days after the end of each month the system serves water to the public the following monitoring information using a



Department-approved form: (12-10-92)

(1) Turbidity monitoring information; and (12-10-92)

(2) Disinfectant residual concentrations entering the distribution system. (12-10-92)

iii. Personnel qualified under Subsection 300.01 shall complete and sign the monthly report forms submitted to the Department as required in Subsection 300.06. (12-10-92)

**b.** In addition to the reporting requirements in 40 CFR 141.75(b), revised as of July 1, 2001, pertaining to systems with filtration treatment, each public water system which provides filtration treatment must report the level of *Giardia lamblia* and virus inactivation/removal achieved each day by filtration and disinfection. (5-8-09)

**07. Recycle Provisions.** 40 CFR 141.76, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

**a.** The Department shall evaluate recycling records kept by water systems pursuant to 40 CFR 141.76 during sanitary surveys, comprehensive performance evaluations, or other inspections. (5-3-03)

**b.** The Department may require a system to modify recycling practices if it can be shown that these practices adversely affect the ability of the system to meet surface water treatment requirements. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**311. ENHANCED FILTRATION AND DISINFECTION FOR CRYPTOSPORIDIUM -- LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE.**

40 CFR Part 141, subpart W, revised as of July 1, ~~2006~~ 2010, is herein incorporated by reference. (4-2-08)(    )

**01. Cryptosporidium Treatment Credit for Approved Watershed Control Program.** The Department shall award 0.5 (zero point five) logs cryptosporidium removal credit to systems that have a Department approved Watershed Control Program. Requirements for a watershed control program are set forth in 40 CFR 141, Subpart W. Guidance on how to develop a watershed control program and obtain Department approval is provided in "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule," as referenced in Section 002. (4-2-08)

**02. Assessment of Significant Changes in the Watershed.** As part of the sanitary survey process set forth in Section 302, the Department, or an agent approved by the Department, shall assess significant changes in the watershed of a surface water system that have occurred since the system conducted source water monitoring. If changes in the watershed have the potential to significantly increase contamination of the source water with cryptosporidium, the

Department shall consult with the water system owner on follow-up actions that may be required under 40 CFR 141, Subpart W, including, but not limited to, source water monitoring and/or additional treatment requirements. "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule," as referenced in Section 002, provides a description of factors that will be considered by the Department when making an assessment of changes in the watershed. These factors include, but are not limited to the following: (4-2-08)

- a. New NPDES permits or changes in existing NPDES permits that involve increased loading of contaminants. (4-2-08)
- b. Changes in land use patterns. (4-2-08)
- c. Changes in agricultural cropping, chemical application, or irrigation practices. (4-2-08)
- d. Changes in other non-point discharge source activities (such as grazing, manure application, commercial or residential development). (4-2-08)
- e. Stream or riverbed modifications. (4-2-08)
- f. NPDES permit violations at wastewater treatment plants and confined animal feedlot operations. (4-2-08)
- g. Dramatic natural events such as floods, forest fires, earthquakes, and landslides that may transport or expose contaminants. (4-2-08)
- h. Prolonged drought conditions that may warrant special preparatory measures to minimize impacts from waste accumulations that are washed into source waters when precipitation returns. (4-2-08)
- i. Status of the water system's emergency response plan. (4-2-08)
- j. Accidental or illegal waste discharges and spills. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**320. DISINFECTANT RESIDUALS, DISINFECTION BYPRODUCTS, AND DISINFECTION BYPRODUCT PRECURSORS.**

This Section incorporates 40 CFR Part 141, Subpart L, of the National Primary Drinking Water Regulations, known as the Disinfectants and Disinfection Byproducts Rule. (4-5-00)

**01. General Requirements.** 40 CFR 141.130, revised as of July 1, 2006, is herein incorporated by reference. (4-2-08)

**02. Analytical Requirements.** 40 CFR 141.131, revised as of July 1, ~~2006~~ 2010, is

herein incorporated by reference. DPD colorimetric test kits may be used to measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide. ~~(4-2-08)~~( )

**03. Monitoring Requirements.** 40 CFR 141.132, revised as of July 1, 2006, is herein incorporated by reference. (4-2-08)

**04. Compliance Requirements.** 40 CFR 141.133, revised as of July 1, 2006, is herein incorporated by reference. (4-2-08)

**05. Treatment Techniques for Control of Disinfection Byproduct (DBP) Precursors.** 40 CFR 141.135, revised as of July 1, 2006, is herein incorporated by reference. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**322. STAGE 2 DISINFECTION BYPRODUCTS REQUIREMENTS.**

40 CFR Part 141, Subpart V, revised as of July 1, 2006~~9~~, is herein incorporated by reference. "Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule," as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR Part 141, Subpart V. ~~(4-2-08)~~( )

**323. GROUND WATER RULE.**

40 CFR 141, Subpart S, revised as of July 1, ~~2007~~ 2010, is herein incorporated by reference. "Implementation Guidance for the Ground Water Rule," as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR 141, Subpart S. ~~(5-8-09)~~( )

**01. Monitoring and Compliance Requirements for Membranes.** Ground water systems that use membrane filtration (or a combination of membrane filtration and disinfection) to achieve a four (4)-log inactivation/removal of viruses at a ground water source must comply with the following requirements in addition to those specified in 40 CFR 141, Subpart S. (5-8-09)

**a.** All membrane skids or modules must undergo direct integrity testing a minimum of once each week that the source is contributing water to the distribution system. More frequent direct integrity testing may be required by the Department. Membrane systems shall contain sufficient redundancy to allow for offline direct integrity testing of all skids at the required interval while retaining the capability to supply peak hour demand to the water system. No membrane system shall have fewer than two (2) skids or modules. (5-8-09)

**i.** The direct integrity test shall have a resolution capable of detecting a response at the absolute molecular weight cut-off or other parameter that describes the exclusion capability of the membrane, as provided by the manufacturer. (5-8-09)

**ii.** The direct integrity test shall have a sensitivity capable of verifying four (4)-log

virus removal (or a lesser Department approved log removal that achieves, in combination with disinfection, a total of four (4)-log virus treatment). (5-8-09)

**b.** Systems using membrane filtration shall submit a monthly operating report which includes the following information. (5-8-09)

**i.** Verification of direct integrity testing of each membrane skid or module and action taken in response to a failure of the direct integrity test. (5-8-09)

**ii.** Records of any monitoring conducted for the purpose of indirect integrity verification. (5-8-09)

**iii.** Any additional information considered necessary by the Department on a case-specific basis to verify proper operation and maintenance of the membrane filtration process. (5-8-09)

**02. Discontinuation of Treatment.** Systems that wish to discontinue four (4)-log virus treatment at a ground water source must meet the following criteria. Ground water sources on which treatment has been discontinued shall be subject to the triggered source water monitoring requirements of 40 CFR 141, Subpart S. (5-8-09)

**a.** Demonstration that any known source of contamination has been removed. (5-8-09)

**b.** Demonstration that structural deficiencies of the well have been rehabilitated and no longer exist. (5-8-09)

**c.** Provide evidence that the well is drawing from a protected or confined aquifer. (5-8-09)

**d.** Submit results of one (1) year of monthly monitoring for a fecal indicator organism during which no positive results occurred. (5-8-09)

**03. Chlorine Purging Prior to Triggered Source Sampling.** 40 CFR 141.402(e), incorporated by reference into these rules at Section 323, requires that ground water source samples be collected at a location prior to any treatment. Pursuant to this requirement, systems that add chlorine to a source, either in the well bore or near enough to the wellhead that chlorinated water could backflow into the well, shall ensure that all chlorine residual has been purged prior to taking a triggered source water sample. This shall be accomplished by measuring chlorine residual in the source water until a reading of zero is obtained and be recorded in the space provided for chlorine residual on the sample submittal form. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. SECONDARY MCLS.**

- 01. Purpose.** 40 CFR 143.1, revised as of July 1, 2003, is herein incorporated by reference. (3-20-04)
- 02. Definitions.** 40 CFR 143.2, revised as of July 1, 2003, is herein incorporated by reference. (3-20-04)
- 03. Secondary Maximum Contaminant Levels.** 40 CFR 143.3, revised as of July 1, 2003, is herein incorporated by reference. (3-20-04)
- 04. Monitoring.** 40 CFR 143.4, revised as of July 1, ~~2003~~ 2010, is herein incorporated by reference. ~~(3-20-04)~~(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**504. FACILITY AND DESIGN STANDARDS: REVIEW OF PLANS AND SPECIFICATIONS.**

The facility and design standards set forth in these rules shall be applied in the review of plans and specifications for public water system facilities. If design issues are not addressed by the facility and design standards set out in these rules, then guidance documents, some of which are listed in Subsection 002.02., shall be used as guidance in the design and review of plans and specifications for public drinking water facilities. See also Section 013. (3-30-07)

**01. Ownership.** Documentation of the ownership and responsibility for operating the proposed system shall be made available to the Department prior to or concurrent with the submittal of plans and specifications as required in Subsection 504.03. The documentation must show organization and financial arrangements adequate to assure construction, operation and maintenance of the system according to these rules. Documentation shall also include the name of the water system, the name, address, and phone number of the supplier of water, the system size, and the name, address, and phone number of the system operator. (3-30-07)

**02. Connection to an Existing System.** If the proposed project is to be connected to an existing public water system, a letter from the purveyor must be submitted to the Department stating that the purveyor will be able to provide services to the proposed project. The Department may require documentation supporting the ability of the purveyor to provide service to the new system without diminishing quality of service to existing customers. This letter must be submitted prior to or concurrent with the submittal of plans and specifications as required in Subsection 504.03. (3-30-07)

**03. Plans and Specifications Required.** (3-30-07)

**a.** Prior to construction of new public drinking water systems, new drinking water systems designed to serve ~~ten~~ fifteen (15) or more service connections, or material modifications of existing public water systems, plans and specifications must be submitted to the Department for review and approval. Construction should commence as soon as practical after approval, and

If construction ~~does is~~ not ~~commence~~ ~~completed~~ within twelve (12) months of the Department's final approval, an extension or re-approval must be obtained from the Department. ~~‡~~The Department may require re-submittal of all or part of the plans and specifications prior to issuing an extension or re-approving the plans and specifications. (~~3-30-07~~)( )

**b.** Plans and specifications for simple water main extensions shall not require pre-construction approval by the Department when such extensions will be owned and operated by a city, county, quasi-municipal corporation or regulated public utility, provided that such plans and specifications are reviewed and approved by a QLPE who was not involved in the preparation of the plans and specifications being reviewed to verify compliance with the requirements of these rules prior to initiation of construction. Any plans and specifications approved pursuant to Subsection 504.03.b. shall be transmitted to the Department at the time construction is authorized and shall be marked or stamped as "Approved for Construction." Along with the plans and specifications, the transmittal must include the items listed in Subsections 504.03.b.i. through 504.03.b.vii. The plans and specifications must be sealed, signed, and dated by the professional engineer in responsible charge of their preparation, and the approval or transmittal letter must be sealed, signed, and dated by the QLPE that is approving the plans and specifications. (5-8-09)

i. A statement that the author of the transmittal letter is the QLPE representing the city, county, quasi- municipal corporation or regulated public entity. (5-8-09)

ii. A statement that the extension project complies with the current facility plan or preliminary engineering report, or a statement that the water system has adequate capacity. Please see Subsection 502.01.b. for further information. (5-8-09)

iii. A statement from the city, county, quasi-municipal corporation or regulated public entity or its authorized agent that the water system purveyor will serve the project. (5-8-09)

iv. A statement from the city, county, quasi-municipal corporation or regulated public entity or its authorized agent that the water system purveyor will own and operate the project after construction is complete. (5-8-09)

v. A statement by the QLPE that the plans and specifications are approved for construction. (5-8-09)

vi. A statement by the QLPE that the plans and specifications comply with the facility standards within these rules. (5-8-09)

vii. A statement recommending whether sanitary restrictions can be released or should remain in force. (5-8-09)

**c.** Subsections 504.03.c.i. through 504.03.c.vi. outline the projects which QLPEs may approve and which QLPEs may not approve. (5-8-09)

i. A QLPE may approve plans and specifications for simple water main extensions that are able to connect to an existing water system owned by a city, county, quasi-municipal corporation, or regulated public utility at the time the extension is approved for construction by the QLPE. (5-8-09)

ii. A QLPE may approve plans for simple water main extensions which will connect to an existing water system, but are unable to connect to the system at the time the extension is approved for construction by the QLPE, provided sanitary restrictions remain in force for the proposed extension. (5-8-09)

iii. A QLPE may not approve plans and specifications which include mechanical systems such as booster stations. (5-8-09)

iv. A QLPE may not approve plans and specifications for projects which the QLPE was the design engineer or otherwise involved in the design. (5-8-09)

v. A QLPE employed by a city, county, quasi-municipal corporation, or regulated public utility may approve a design that was prepared by a subordinate engineer or an engineer from a separate design group within the city, county, quasi-municipal corporation, or regulated public utility. (5-8-09)

vi. A QLPE who is not employed by a city, county, quasi-municipal corporation, or regulated public utility, but is retained by a city, county, quasi-municipal corporation, or regulated public utility for the purpose of plan and specification review may not approve projects designed by the company with which the QLPE is employed. (5-8-09)

d. At the discretion of the city, county, quasi-municipal corporation or regulated public utility, the plans addressed by Subsection 504.03.b. may be referred to the Department for review and approval prior to initiation of construction. (3-30-07)

e. New or updated operation and maintenance manual or manuals, as required in Subsection 501.12, shall be submitted to the Department for review and approval prior to start-up of the new or modified public water system. (3-30-07)

**04. Criteria for Review.** The Department shall review plans and specifications to determine compliance with these rules and engineering standards of care. If the plans and specifications comply with these rules and engineering standards of care, the Department shall not substitute its judgment for that of the owner's design engineer concerning the manner of compliance with the rule. (3-30-07)

**05. Schedule for Review.** The Department shall review plans and specifications and endeavor to resolve design issues within forty-two (42) calendar days of submittal such that approval can be granted. If the Department and applicant have not resolved design issues within forty-two (42) calendar days or at any time thereafter, the applicant may file a written demand to the Department for a decision. Upon receipt of such written demand, the Department shall deliver a written decision to the applicant within no more than seven (7) calendar days explaining any reasons for disapproval. The Department shall maintain records of all written demands for decision made pursuant to Subsection 504.05 with such records including the final decision rendered and the timeliness thereof. (3-30-07)

**06. Engineer's Seal Required.** Plans and specifications submitted to the Department shall bear the imprint of an Idaho licensed professional engineer's seal; except that the

Department will accept the seal of an Idaho licensed professional geologist on the following: (3-30-07)

**a.** Well source, spring source, or infiltration gallery site evaluation reports, as specified in Subsections 510 and 514. (3-30-07)

**b.** Plans and specifications for well construction and results of field inspection and testing, as specified in Section 510. (3-30-07)

**07. Contents of Plans and Specifications.** Plans and specifications shall, where pertinent, provide the following: (3-30-07)

**a.** General layout, including: (3-30-07)

i. Suitable title. (3-30-07)

ii. Name of municipality or other entity or person responsible for the water supply. (3-30-07)

iii. Area or institution to be served. (3-30-07)

iv. Scale of drawings. (3-30-07)

v. North arrow. (3-30-07)

vi. Datum used. (3-30-07)

vii. General boundaries of municipality or area to be served. (3-30-07)

viii. Date, name, and address of the designing engineer. (3-30-07)

ix. Legible prints suitable for reproduction. (3-30-07)

x. Location and size of existing water mains, if applicable. (3-30-07)

xi. For systems undergoing material modification, location and nature of existing water works structures and appurtenances affecting the proposed improvements. (3-30-07)

**b.** Detailed plans, including: (3-30-07)

i. Stream crossings, providing profiles with elevations of the stream bed and the estimated normal and extreme high and, where appropriate, low water levels. (3-30-07)

ii. Location and size of the property to be used for the development with respect to known references such as roads, streams, section lines, or streets. (3-30-07)

iii. Topography and arrangement of present or planned wells or structures. (3-30-07)



- iv. Elevations of the one hundred (100) year flood level in relation to the floor of structures, upper termination of protective casings, and grade surrounding facilities. (3-30-07)
- v. Details of well construction, including diameter and depth of drill holes, casing and liner diameters and depths, grouting depths, elevations, and designation of geological formations, water levels and other data as specified in Section 510. (3-30-07)
- vi. Location of all known existing and potential sources of pollution within five hundred (500) feet of water sources or underground treated storage facilities. (3-30-07)
- vii. Size, length, and materials of proposed water mains. (3-30-07)
- viii. Location of existing or proposed streets; water sources, ponds, lakes, and drains; storm sanitary, combined and house sewers; septic tanks, disposal fields and cesspools. (3-30-07)
- ix. Schematic flow diagrams and hydraulic profiles showing the flow through various plant units. (3-30-07)
- x. Piping in sufficient detail to show flow through the plant including waste lines. (3-30-07)
- xi. Locations of all chemical storage areas, chemical feeding equipment, and points of chemical application. (3-30-07)
- xii. All appurtenances, specific structures, equipment, water treatment plant waste disposal units and points of discharge having any relationship to the plans for water mains or water works structures. (3-30-07)
- xiii. Locations of sanitary or other facilities, such as lavatories, showers, toilets, and lockers, when applicable or required by the Department. (3-30-07)
- xiv. Locations, dimensions, and elevations of all proposed plant facilities. (3-30-07)
- xv. Locations of all sampling taps owned by the water system. (3-30-07)
- xvi. Adequate description of any significant features not otherwise covered by the specifications that may impact public safety or welfare. (3-30-07)
- c.** Complete, detailed technical specifications shall be supplied for the proposed project, including: (3-30-07)
  - i. A program for keeping existing water works facilities in operation during construction of additional facilities so as to minimize interruption of service. (3-30-07)
  - ii. Laboratory facilities and equipment. (3-30-07)
  - iii. Description of chemical feeding equipment. (3-30-07)

iv. Procedures for flushing, disinfection and testing, as needed, prior to placing the project in service. All wells, pipes, tanks, and equipment which can convey or store potable water shall be disinfected in accordance with AWWA Standards, incorporated into these rules at Subsection 002.01. Plans or specifications shall outline the procedure and include the disinfectant dosage, contact time, and method of testing the results of this procedure. (3-30-07)

v. Materials or proprietary equipment for sanitary or other facilities, including any necessary backflow or back-siphonage protection. (3-30-07)

d. Complete design criteria, as set forth in these rules. (3-30-07)

e. The Department may require additional information which is not part of the construction drawings, including, but not limited to, head loss calculations, proprietary technical data, and copies of contracts. (3-30-07)

**08. Notification of Material Deviations.** As set forth in Subsection 504.03, during construction or modification, the reviewing authority must be notified of any material deviation from the approved plans. The reviewing authority's prior written approval is required before any material deviation is allowed. (3-30-07)

**09. Record Plans and Specifications Required.** (5-8-09)

a. Within thirty (30) calendar days of the completion of construction of facilities for which plans are required to be reviewed pursuant to Subsection 504.03, record plans and specifications based on information provided by the construction contractor and field observations made by the engineer or the engineer's designee depicting the actual construction of facilities performed, must be submitted to the Department by the engineer representing the city, county, quasi-municipal corporation or regulated public utility that owns the project, or by the design engineer or owner-designated substitute engineer if the facilities will not be owned and operated by a city, county, quasi-municipal corporation or regulated public utility. Such submittal by the professional engineer must confirm material compliance with the approved plans and specifications or disclose any material deviations therefrom. If the construction does not materially deviate from the approved plans and specifications, the owner may have a statement to that effect prepared by an Idaho licensed professional engineer and filed with the Department in lieu of submitting a complete and accurate set of record drawings. (3-30-07)

b. Record plans and specifications, or a statement submitted in lieu of record plans and specifications, must be sealed, signed, and dated by the professional engineer in responsible charge of their preparation. (5-8-09)

c. The Department will accept the seal of an Idaho licensed professional geologist on record plans and specifications, or a statement bearing the seal of an Idaho licensed professional geologist in lieu of record plans and specifications, for record plans and specifications for well construction and results of field inspection and testing, as specified in Section 510. (5-8-09)

**10. Exception.** The Department may waive the plan and specification approval required of any particular facility or category of facilities when doing so will have no significant impact on public health or the environment. (3-30-07)

**11. Requirement to Have Approved Plans and Specifications and Approval Letter On-Site During Construction.** It is the responsibility of the owner to maintain one (1) copy of the approved plans and specifications and the approval letter from the reviewing authority on-site during construction at all times. (3-30-07)

**12. Construction.** Except as provided in Subsection 504.03.b., no construction shall commence until all of the necessary approvals have been received from the Department. The owner shall provide for the inspection of the construction of a public drinking water system facility by an Idaho licensed professional engineer to the extent required to confirm material compliance with the approved plans and to produce accurate record documents as required by Subsection 504.09. (3-30-07)

**505. -- 509. (RESERVED).**

**510. FACILITY AND DESIGN STANDARDS: SITING AND CONSTRUCTION OF WELLS.**

Written approval by the Department is required before water from any new or reconstructed well may be served to the public. Any supplier of water for a public water system served by one (1) or more wells shall ensure that the following requirements are met: (3-30-07)

**01. Site Approval.** Prior to drilling, the site of a public water system well must be approved in writing by the Department. The Department shall require the supplier of water to submit a well site evaluation report that takes into account the proposed size, depth, and location of the well. The evaluation may include, but is not limited to the following types of information: (3-30-07)

- a.** An evaluation of the potability and quality of anticipated ground water. (5-3-03)
- b.** Identification of the known aquifers and the extent of each aquifer, based on the stratigraphy, sedimentation, and geologic structure beneath the proposed well site. (5-3-03)
- c.** An estimate of hydrologic and geologic properties of each aquifer and confining layers. (5-3-03)
- d.** Prediction of the sources of water to be extracted by the well and the drawdown of existing wells, springs, and surface water bodies that may be caused by pumping the proposed well. This prediction may be based on analytical or numerical models as determined by the Idaho Department of Water Resources permitting process. (3-30-07)
- e.** Demonstration of the extent of the capture zone of the well, based on the well's design discharge and on aquifer geology, using estimates of hydraulic conductivity and storativity. (5-3-03)
- f.** Description of potential sources of contamination within five hundred (500) feet of the well site. (5-3-03)

**02. Location.** Each well shall be staked by the design engineer or licensed

professional geologist prior to drilling, be located a minimum of fifty (50) feet from the nearest property line, be located a minimum of fifty (50) feet from any potential source of contamination, and be no closer to specified sources of contamination than set forth in Subsection 900.01. In vulnerable settings, the Department may require engineering or hydrologic analysis to determine if the required setback distance is adequate to prevent contamination. (5-8-09)

**03. Construction Standards.** In addition to meeting the requirements of these rules, all wells shall be constructed in accordance with IDAPA 37.03.09, "Well Construction Standards Rules," and related rules and laws administered by the Idaho Department of Water Resources. All wells shall comply with the drilling permit requirements of Section 42-235, Idaho Code. (5-3-03)

**a.** Casing that meets the requirements set forth in Subsection 900.02 (Table 2). The use of plastic well casing for public water system wells may be considered on a case-by-case basis. Plastic casing shall meet or exceed ASTM Standard F480-02 and ANSI/NSF Standard 61. (5-8-09)

**b.** Public water system wells shall have no less than fifty-eight (58) feet of annular seal of not less than one and one-half (1 ½) inches thickness as measured from land surface to the bottom of the seal unless: (3-30-07)

i. It can be demonstrated to the Department's satisfaction that there is a confining layer at lesser depth that is capable of preventing unwanted water from reaching the intake zone of the well; or (5-3-03)

ii. The best and most practical aquifer at a particular site is less than fifty-eight (58) feet deep; or; (5-3-03)

iii. The Department specifies a different annular seal depth based on local hydrologic conditions. (5-3-03)

iv. More stringent standards are required by applicable Rules of the Idaho Water Resources Board, referenced in Subsection 002.02. (3-30-07)

**c.** Specifications shall include allowable tolerances for plumbness and alignment in accordance with AWWA Standards, incorporated by reference into these rules at Subsection 002.01, or as otherwise approved by the Department. If the well fails to meet these requirements, it may be accepted by the Department if it does not interfere with the installation or operation of the pump or uniform placement of grout. (3-30-07)

**d.** Geological data shall be collected at each pronounced change in formation and shall be recorded in the driller's log. Supplemental data includes, but is not limited to, accurate geographical location such as latitude and longitude or GIS coordinates, and other information on accurate records of drillhole diameters and depths, assembled order of size and length of casing, screens and liners, grouting depths, formations penetrated, and water levels. (3-30-07)

**e.** The owner of each well shall retain all records pertaining to each well until the well has been properly abandoned. (3-30-07)

- f. Wells with intake screens shall: (3-30-07)
- i. Be constructed of materials resistant to damage by chemical action of ground water or cleaning operations. (3-30-07)
- ii. Have openings based on sieve analysis of formation or gravel pack materials. (5-8-09)
- iii. Have sufficient length and diameter to provide adequate specific capacity and aperture entrance velocity not to exceed point three (0.3) feet per second, or as otherwise approved by the Department. (3-30-07)
- iv. Be installed so that the pumping water level remains above the screen under all operating conditions, or otherwise approved by the Department. Where a bottom plate or sump is utilized, it shall be of the same material as the screen, or as otherwise approved by the Department. Where a washdown assembly, tailpipe or sump is used below the screen, it may be made of a different material than the screen. (3-30-07)
- g. Permanent well casing shall be surrounded by a minimum of one and one-half (1 ½) inches of grout to the depth required by Subsection 510.03.b. of these rules, or by the Rules of the Idaho Water Resources Board referenced in Subsection 002.02, whichever is greater. All casing identified in plans and specifications as temporary casing shall be removed prior to well completion. (5-8-09)
- i. Neat cement grout consisting of cement that conforms to AWWA Standard A-100, and water, with not more than six (6) gallons of water per ninety-four (94) pounds of cement, shall be used for one and one-half (1 ½) inch openings. Additives may be used to enhance effectiveness and are subject to approval by the reviewing authority and the Idaho Department of Water Resources on a case-by-case basis. (3-30-07)
- ii. Bentonite grout shall have a solids content not less than twenty-five (25) percent by weight when mixed with water and be specifically manufactured for use in sealing of well casing. Bentonite grout shall not contain weighting agents to increase solids content. Bentonite grout shall not be used above the water table. All bentonite grout shall be installed by positive displacement from the bottom up through a tremmie or float shoe. (3-30-07)
- iii. Where a dry annular space is to be sealed, a minimum of two (2) inches on all sides of the casing shall be required to place bentonite to depths not greater than one hundred (100) feet, using #8 mesh granular bentonite. All dry pour granular bentonite shall be tagged at appropriate intervals to verify placement. If a bridge occurs, a tremmie pipe shall be washed or jetted through the bridge to allow for pumping of grout. Bentonite chips shall be of sufficient size to accommodate proper placement for the existing subsurface conditions. (3-30-07)
- iv. Dry granular bentonite used in wells where a dry annular space is to be sealed with depths greater than one hundred (100) feet shall require an annulus of at least three (3) inches on all sides of the casing, or as approved by the reviewing authority and the Idaho Department of Water Resources. If a bridge occurs, a tremmie pipe shall be washed or jetted through the bridge to allow for pumping of grout. Bentonite chips shall be of sufficient size to accommodate proper

placement for the existing subsurface conditions. (3-30-07)

v. All chip bentonite seals installed through water shall only be used in annular spaces of at least four (4) inches on all sides of the casing. If a bridge occurs, a tremmie pipe shall be washed or jetted through the bridge to allow for pumping of grout. Bentonite chips shall be of sufficient size to accommodate proper placement for the existing subsurface conditions. Chip bentonite seals installed through water shall be: (3-30-07)

(1) Installed in accordance with manufacturer's specifications; or (3-30-07)

(2) Installed by pouring chips over a one-quarter (1/4) inch mesh screen for three-eighths (3/8) inch chips to remove fines to prevent bridging at the water table; or (3-30-07)

(3) Installed using coated pellets to retard hydration if approved by the reviewing authority and the Idaho Department of Water Resources. (3-30-07)

vi. Concrete may be approved on a case-by-case basis by the reviewing authority and the Idaho Department of Water Resources. Upon such approval, the approved method shall use a six (6) sack minus one-half (1/2) inch Portland cement concrete and shall be installed by positive displacement from the bottom up through a tremmie pipe. (3-30-07)

**04. Disinfection.** All tools, bits, pipe, and other materials to be inserted in the borehole shall be cleaned and disinfected in accordance with the Well Construction Standards and permitting requirements of the Idaho Water Resources Board, referenced in Subsection 002.02. This applies to new well construction and repair of existing wells. (3-30-07)

**05. ~~Information~~ Well Completion Report Required.** Upon completion of a ~~groundwater source~~ well, and prior to its use as a drinking water source, the following information and data must be submitted by the water system to the Department. The well completion report must be submitted to the Department prior to or concurrent with the submittal of the preliminary engineering report for well house construction/modification. The well completion report shall bear the imprint of an Idaho licensed professional engineer's or an Idaho licensed professional geologist's seal that is both signed and dated by the engineer or geologist:

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

a. A copy of all well logs; (12-10-92)

b. Results of test pumping, as specified in Subsection 510.06; ~~(3-30-07)~~( )

c. As constructed plans showing at least the following: (12-10-92)

i. Annular seal, including depth and sealant material used and method of application; (5-3-03)

ii. Casing perforations, results of sieve analysis used in designing screens installed in sand or gravel aquifers, gravel packs; and (5-3-03)

iii. Recommended ~~P~~ump location; and ~~(12-10-92)~~( )

iv. For community water systems, a permanent means for measuring water level. All equipment required for conducting water level measurements shall be purchased and made available to the water system operator at the time well construction is completed. Where pneumatic or electronic water level measuring equipment is used, it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and in such a manner as to prevent entrance of foreign materials. (3-30-07)

d. Other information as may be specified by the Department. (12-10-92)

e. Sampling results for iron, manganese, corrosivity, and other secondary contaminants specified by the Department. Other monitoring requirements are specified in Subsections 510.05.e.i. through 510.05.e.iii. (5-8-09)

i. Community Systems. Results of analysis for total coliform, inorganic chemical contaminants, organic chemicals, and radionuclide contaminants set forth in Subsections 050.01, 050.02, 050.05, 100.01, 100.03, 100.04, 100.05, and 100.06, unless analysis is waived pursuant to Subsection 100.07. (5-8-09)

ii. Nontransient Noncommunity Systems. Results of analysis for total coliform and inorganic and organic chemical contaminants listed in Subsections 050.01, 050.02, 100.01, 100.03, 100.04, unless analysis is waived pursuant to Subsection 100.07. (5-8-09)

iii. Transient Noncommunity Systems. Results of a total coliform, nitrite, and nitrate analysis listed in Subsections 050.01, 100.01 and 100.03. (5-8-09)

**06. Test Pumping.** Upon completion of a ground water source, test pumping shall be conducted in accordance with the following procedures to meet the specified requirements: (12-10-92)

a. The well shall be test pumped at the desired yield (design capacity) of the well for at least twenty-four (24) consecutive hours after the drawdown trend has stabilized, as determined by the supervising engineer or geologist. Alternatively, the well may be pumped at a rate of one hundred fifty percent (150%) of the desired yield for at least six (6) continuous hours after the drawdown trend has stabilized, as determined by the supervising engineer or geologist. The field pumping equipment must be capable of maintaining a constant rate of discharge during the test. Discharge water must be piped an adequate distance to prevent recharge of the well during the test. If the well fails the test protocol, design of the water system shall be re-evaluated and submitted to the Department for approval. (3-30-07)

b. Upon completion of well development, the well shall be tested for sand production. Fifteen (15) minutes after the start of the test pumping (at or above the design production rate), the sand content of a new well shall not be more than five (5) parts per million. Sand production shall be measured by a centrifugal sand sampler or other means acceptable to the Department. If sand production exceeds five (5) ppm, the well shall be screened gravel packed, or re-developed. (3-30-07)

c. The following data shall be provided: (5-3-03)

- i. Static water level in the well prior to test pumping; (5-3-03)
- ii. Well yield in gpm and duration of the pump test, including a discussion of any discrepancy between the desired yield and the yield observed during the test; (5-3-03)
- iii. Water level in the well recorded at regular intervals during pumping; (5-3-03)
- iv. Profile of water level recovery from the pumping level projected to the original static water level. (5-3-03)
- v. Depth at which the test pump was positioned in the well; (5-3-03)
- vi. Test pump capacity and head characteristics; (5-3-03)
- vii. Sand production data. (5-3-03)
- viii. ~~Any available~~ Results of analysis based on the drawdown and recovery test pertaining to aquifer properties, **long term** sustained yield, and boundary conditions affecting drawdown. ~~(5-3-03)~~( )

**d.** The Department may allow the use of other pump test protocols that are generally accepted by engineering firms with specialized experience in well construction, by the well drilling industry, or as described in national standards (such as ANSI/AWWA A100-97), as long as the minimum data specified in Subsection 510.06.c. are provided. The Department welcomes more extensive data about the well, such as step-drawdown evaluations used in determining well capacity for test pumping purposes, zone of influence calculations, and any other information that may be of use in source protection activities or in routine water system operations. (3-30-07)

**e.** Where aquifer yield, sustainability, or water quality are questionable, the Department, at its discretion, may require additional site specific investigations that could include test well construction, long-term pumping tests, or other means to demonstrate that the aquifer is sufficient to meet the long-term water requirements of the project. (4-11-06)

**07. Conversion of Non-Public Water System Wells for Public Water System Use.** Any existing well constructed for use other than as a public water system source may be considered for use as a public water system source on a case-by-case basis. The owner of such a well must demonstrate to the Department's satisfaction that the well site conforms to the requirements of Subsections 510.01, 510.02, and Section 512, the well is constructed in a manner that is protective of public health and that both the quantity and quality of water produced by the well meet public water system standards set forth in these rules. (5-8-09)

**08. Observation Wells.** If observation wells are used and are intended to remain in service after completion of the water supply well, the observation wells shall be constructed in accordance with the requirements for permanent wells and be protected at the upper terminal to preclude entrance of foreign materials. See Rules of the Idaho Water Resources Board referenced in Subsection 002.02. (3-30-07)



**09. Well Abandonment.** Any water supply well that will no longer be used must be abandoned by sealing the borehole carefully to prevent pollution of the ground water, eliminate any physical hazard, conserve aquifer yield, maintain confined head conditions in artesian wells, and prevent mixing of waters from different aquifers. The objective of proper well abandonment procedures is to restore, as far as possible, the original hydrogeologic conditions. The services of a licensed well driller are required. Instructions for abandoning various types of wells may be obtained from the Idaho Department of Water Resources. See Rules of the Idaho Water Resources Board referenced in Subsection 002.02. (3-30-07)

**511. FACILITY AND DESIGN STANDARDS: WELL PUMPS, DISCHARGE PIPING, AND APPURTENANCES.**

**01. Sample Tap Required.** A sample tap suitable for collecting bacteriological samples shall be provided on the discharge piping from every well at a point where pressure is maintained but prior to any treatment. This sample tap shall be of the smooth-nosed type without interior or exterior threads, shall not be of the mixing or petcock type, and shall not have a screen, aerator, or other such appurtenance. The sample tap for collecting bacteriological samples may be used for other sampling purposes. In addition, threaded hose bib taps may also be used for collecting samples, other than bacteriological samples, if equipped with an appropriate backflow prevention device as may be necessary to protect the public water system from contamination. (5-8-09)

**02. Discharge Piping.** The discharge line shall be equipped with the necessary valves and appurtenances to allow a well to be pumped to waste at the design capacity of the well via an approved air gap at a location prior to the first service connection, and shall meet the following requirements: (3-30-07)

- a.** Be designed to minimize friction loss. (3-30-07)
- b.** Have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided. (3-30-07)
- c.** Be protected against contamination. (3-30-07)
- d.** Vertical turbine pumps shall be equipped with an air release-vacuum relief valve, or equivalent, located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least eighteen (18) inches above the floor and covered with a twenty-four (24) mesh corrosion resistant screen. (3-30-07)
- e.** Have all exposed piping, valves and appurtenances protected against physical damage and freezing. (3-30-07)
- f.** Be properly anchored to prevent movement, and protected against surge or water hammer. (3-30-07)

**03. Pressure Gauge Required.** A pressure gauge shall be provided ~~at all installations~~ on all discharge piping. (~~3-30-07~~)(    )

**04. Flow Meter and Check Valve.** Unless otherwise approved by the Department, an instantaneous and totalizing flow meter equipped with nonvolatile memory shall be installed on the discharge line of each well in accordance with the manufacturer's specifications. An accessible check valve, which is not located in the pump column, shall be installed in the discharge line of each well between the pump and the shut-off valve. Additional check valves shall be located in the pump column as necessary. (5-8-09)( )

**05. Well Vent.** All wells shall be vented, unless it can be demonstrated that the drawdown under maximum pumping conditions will not exceed ten (10) feet. ~~with~~ The open end of the vent shall be screened with a twenty-four (24) mesh or similar non-corrodible screen and terminated downward at least eighteen (18) inches above the final ground surface. Artesian wells equipped with pumps may need venting or an air valve as determined by the Department. (3-30-07)( )

**06. Casings and Sanitary Well Caps.** The following requirements apply to well casings and sanitary caps: (3-30-07)

**a.** Casings shall extend a minimum of eighteen (18) inches above the final ground surface. ~~and, if~~ If the well is located within a pump house, casings shall extend twelve (12) inches above the pump house floor. ~~If local hydrological conditions require that~~ For a well ~~be~~ located in an area subject to flooding, the Department may require an extension of the casing ~~to extend~~ above the one hundred (100) year or highest known flood level, whichever is higher. (3-30-07)( )

**b.** Wells shall be cased and provided with an sanitary approved cap in such a manner that surface water cannot enter the well. (3-30-07)( )

**07. Well Houses.** For regulatory purposes, a well house is considered a pump house as defined in Section 003. Well houses must meet the requirements for pump houses as set forth in Section 541. All above ground discharge piping shall be contained in a well house or otherwise protected from freezing. (3-30-07)( )

**08. Pitless Adapters and Units.** Pitless adapters or pitless units: (3-30-07)

**a.** Shall be of the type marked approved by the National Sanitation Foundation or Pitless Adapter Division of the Water Systems Council. (12-10-92)

**b.** Shall be designed, constructed and installed to be watertight including the cap, cover, casing extension and other attachments. (12-10-92)

**c.** Shall be field tested for leaks before being put into service. The procedure outlined in "Manual of Individual and Non-Public Water Supply Systems," referenced in Subsection 002.02, or other procedure approved by the Department shall be followed. (3-30-07)

**d.** Pitless adapters with a two (2) inch or smaller discharge line shall be provided with a swing joint outside the pitless adapter unit to reduce strain, deformation, and possible leakage of the pitless seal caused by settling soils in the trench. The orientation of swing joints shall be such that any settling that occurs will tighten the threads. The hole in the casing shall be cut with a saw

rather than a torch with an opening large enough to allow seating of gaskets. (3-30-07)

e. Shall be provided with a contamination-proof entrance connection for electrical cable. (3-30-07)

f. In the case of pitless adapters: (3-30-07)

i. Threaded adapters shall be installed by drilling a hole not more than one quarter (1/4) inch larger than the outer diameter of the pitless shank. No torch-cut holes shall be accepted. The orientation of swing joints shall be such that any settling that occurs will tighten the threads. (3-30-07)

ii. The only field welding permitted will be that needed to connect a pitless adapter to the casing. (3-30-07)

g. In the case of pitless units: (3-30-07)

i. Shall be shop-fabricated from the point of connection with the well casing to the unit cap or cover. (3-30-07)

ii. Shall be constructed of materials and weight at least equivalent to and compatible with the well casing. (3-30-07)

iii. Shall be threaded or welded to the well casing. Threaded units shall be installed by drilling a hole not more than one quarter (1/4) inch larger than the outer diameter of the pitless shank. No torch-cut holes shall be accepted. If the connection to the casing is by field weld, the shop-assembled unit must be designed specifically for field welding to the casing. (3-30-07)

iv. Shall terminate at least eighteen (18) inches above final ground elevation or three (3) feet above the 100-year flood level or the highest known flood elevation, whichever is higher, or as otherwise approved by the Department. (3-30-07)

v. Shall be provided with access to disinfect the well. (3-30-07)

vi. Shall have field connection to the lateral discharge from the pitless unit of threaded, flanged, or mechanical joint connection. (3-30-07)

**h.** After installation of a pitless adapter or unit and depending on ground water levels and other subsurface conditions, any disturbed well seal may require repair or replacement to meet original seal specifications as determined by the Department. ( )

**09. Wells Not Allowed in Pits.** Wells shall not be located in pits. Exceptions to this requirement will be granted by the Department if the well was constructed prior to November 5, 1964, and the installation is constructed or reconstructed in accordance with the requirements of the Department to provide watertight construction of pit walls and floors, floor drains and acceptable pit covers. (3-30-07)

**10. Discharge Pumps.** Discharge pumps shall be subject to the following

requirements: (3-30-07)

- a.** Line shaft pumps shall. (3-30-07)
  - i. Have the casing firmly connected to the pump structure or have the casing inserted into a recess extending at least one-half (1/2) inch into the pump base. (3-30-07)
  - ii. Have the pump foundation and base designed to prevent water from coming into contact with the joint. (3-30-07)
  - iii. Use lubricants that meet ANSI/NSF Standard 61. (3-30-07)
- b.** When a submersible pump is used: (3-30-07)
  - i. The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables. (3-30-07)
  - ii. The electrical cable shall be firmly attached to the drop pipe at twenty-one (21) foot intervals or less, or at each coupling or joint. (3-30-07)

**512. FACILITY AND DESIGN STANDARDS: WELL LOT.**

A well lot shall be provided for wells constructed after November 1, 1977. The well lot shall be owned in fee simple by the supplier of water or controlled by lease or easement with a term of not less than the useful life of the well and be large enough to provide a minimum distance of fifty (50) feet between the well and the nearest property line. (3-30-07)

**01. Use of Chemicals on the Well Lot.** No pesticides, herbicides, or fertilizers shall be applied to a well lot without prior approval from the Department. (3-30-07)

**02. Storage of Hazardous Materials on the Well Lot.** No pesticides, herbicides, fertilizers, portable containers of petroleum products, or other materials known to be toxic or hazardous shall be stored on a well lot, except that: (3-30-07)

**a.** An internal combustion engine to drive either a generator for emergency standby power or a pump to provide fire flows, and an associated fuel tank, may be placed on the well lot. (5-3-03)

**b.** A propane or natural gas powered generator is preferable to reduce risk of fuel spillage. (5-3-03)

**c.** If a diesel or gasoline-fueled engine is used, the fuel tank and connecting piping must be approved by the Underwriter's Laboratory, Inc., double-walled, meet the requirements of the local fire jurisdiction, and include both spill prevention and overfill protection features. The tank must be above ground and may be contained within the structural base of the generator unit. A licensed water system operator shall be present during filling of the tank following a period of usage, or during periodic extraction and replacement of outdated fuel. (4-6-05)

**d.** Should the internal combustion engine be located within the pump house, the floor

of the pump house shall be constructed so as to contain all petroleum drips and spills so that they will not be able to reach the floor drain(s). Engine exhaust shall be directly discharged outside the pump house. (3-30-07)

e. A spill containment structure shall surround all fuel tanks and be sized to contain at least one hundred ten percent (110%) of the fuel tank volume. The Department may require additional containment capacity in settings where accumulation of snow, ice, or rain water could be expected to diminish the usable capacity of the structure. (4-6-05)

**03. Location of Hydrants.** Hydrants of the frost free type shall be placed in the buried piping system at a minimum of five (5) feet away from the well casing to prevent drain water from accumulating and compromising the grout seal surrounding the well casing. (5-8-09)

**04. Parking Lots and Vehicle Storage.** No public parking or vehicle storage shall be allowed on the well lot, except that operation/maintenance vehicles may be temporary parked on the well lot during the normal course of business. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**514. FACILITY AND DESIGN STANDARDS: SPRING SOURCES.**

Written approval by the Department is required before water from any new or reconstructed spring source may be served to the public. For new spring sources, the Department *may shall* require a site evaluation report *as set forth for wells* containing applicable required information listed in Subsection 510.01. This information includes, but is not limited to, the following: an evaluation of the potability and quality of anticipated spring water; an estimate of hydrologic and geologic properties of the aquifer; and a description of potential sources of contamination within five hundred (500) feet of the spring. Any supplier of water for a public water system served by one (1) or more springs shall ensure that the following requirements are met: (3-30-07)( )

**01. Protection of the Spring.** Springs shall be housed in a permanent structure and protected from contamination including the entry of surface water, animals, and dust. The spring box shall be equipped with a screened overflow. The inlet shall be screened *as determined by the Department* and located above the floor of the collection chamber. (3-30-07)( )

**02. Access to Spring Box.** Each spring box access shall be elevated at least twenty-four (24) inches above the top of the box or the ground level, whichever is higher. The actual height above the top of the box or the ground level must be sufficient to prevent incidental contamination from snow accumulation, storm water runoff or accumulation, irrigation water, or other potential sources of contamination. Each access shall be fitted with a solid water tight cover which overlaps a framed opening and extends down around the frame at least two (2) inches. The frame shall be at least four (4) inches high and shall have a locking device. (5-8-09)

**03. Sample Tap Required.** A sample tap suitable for collecting bacteriological samples shall be provided. This sample tap shall be of the smooth-nosed type without interior or exterior threads, shall not be of the mixing or petcock type, and shall not have a screen, aerator, or

other such appurtenance. The sample tap for collecting bacteriological samples may be used for other sampling purposes. In addition, threaded hose bib taps may also be used for collecting samples, other than bacteriological samples, if equipped with an appropriate backflow prevention device as may be necessary to protect the public water system from contamination. (5-8-09)

**04. Flow Measurement.** A flow meter or other flow measuring device shall be provided. (3-30-07)

**05. Protected Area.** The entire area within a one hundred (100) foot radius of the spring box shall be owned by the supplier of water or controlled by a long term lease, fenced to prevent trespass of livestock and void of buildings, dwellings and sources of contamination. Surface water shall be diverted from this area. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**531. FACILITY DESIGN STANDARDS: DESIGN STANDARDS FOR CHEMICAL APPLICATION.**

- 01. General Equipment Design.** General equipment design shall be such that: (3-30-07)
- a.** Feeders will be able to supply, at all times, the necessary amounts of chemicals at an accurate rate, throughout the range of feed. (3-30-07)
  - b.** Chemical-contact materials and surfaces are resistant to the aggressiveness of the chemical solution. (3-30-07)
  - c.** Corrosive chemicals are introduced in such a manner as to minimize potential for corrosion. (3-30-07)
  - d.** Chemicals that are incompatible are not stored or handled together. At facilities where more than one (1) chemical is stored or handled, tanks and pipelines shall be clearly labeled to identify the chemical they contain. (3-30-07)
  - e.** All chemicals are conducted from the feeder to the point of application in separate conduits. (3-30-07)
  - f.** Chemical feeders are as near as practical to the feed point. (3-30-07)
  - g.** Chemical feeders and pumps shall operate at no lower than twenty percent (20%) of the feed range unless two fully independent adjustment mechanisms such as pump pulse rate and stroke length are fitted when the pump shall operate at no lower than ten percent (10%) of the rated maximum. (3-30-07)
  - h.** Spare parts shall be on hand for parts of feeders that are subject to frequent wear

and damage. (5-8-09)

**i.** Redundant chemical feeders with automatic switchover shall be provided when necessary to ensure adequate treatment. (5-8-09)

**02. Facility Design.** (3-30-07)

**a.** Where chemical feed is necessary for the protection of the supply, such as disinfection, coagulation or other essential processes, a minimum of two feeders shall be provided and a separate feeder shall be used for each chemical applied. (3-30-07)

**b.** Chemical application control systems shall meet the following requirements: (3-30-07)

**i.** Feeders may be manually or automatically controlled, with automatic controls being designed so as to allow override by manual controls. (3-30-07)

**ii.** Chemical feeders shall be controlled by a flow sensing device so that injection of the chemicals will not continue when the flow of water stops. (3-30-07)

**iii.** Chemical feed rates shall be proportional to flow. (3-30-07)

**iv.** A means to measure water flow must be provided in order to determine chemical feed rates. (3-30-07)

**v.** Provisions shall be made for measuring the quantities of chemicals used. (3-30-07)

**vi.** Weighing scales shall be provided for weighing cylinders at all plants utilizing chlorine gas, fluoride solution feed. (3-30-07)

**vii.** Weighing scales shall be capable of providing reasonable precision in relation to average daily dose. (5-8-09)

**viii.** Where conditions warrant, for example with rapidly fluctuating intake turbidity, coagulant and coagulant aid addition may be made according to turbidity, streaming current or other sensed parameter. (3-30-07)

**c.** Dry chemical feeders shall measure chemicals volumetrically or gravimetrically, provide adequate solution water and agitation of the chemical in the solution pot, and completely enclose chemicals to prevent emission of dust to the operating room. (3-30-07)

**d.** Positive displacement type solution feed pumps must be capable of operating at the required maximum head conditions found at the point of injection. (3-30-07)

**e.** Liquid chemical feeders shall be such that chemical solutions cannot be siphoned or overfed into the water supply, by assuring discharge at a point of positive pressure, or providing vacuum relief, or providing a suitable air gap, or providing other suitable means or combinations as necessary. (3-30-07)

- f.** Cross connection control must be provided to assure that the following requirements are satisfied. (3-30-07)
- i.** The service water lines discharging to solution tanks shall be properly protected from backflow. (5-8-09)
- ii.** No direct connection exists between any sewer and a drain or overflow from the feeder, solution chamber or tank by providing that all drains terminate at least six (6) inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit or waste receptacle. (3-30-07)
- g.** Chemical feed equipment shall be readily accessible for servicing, repair, and observation of operation. (3-30-07)
- h.** In-plant water supply for chemical mixing shall be: (3-30-07)
- i.** Ample in quantity and adequate in pressure. (3-30-07)
- ii.** Provided with means for measurement when preparing specific solution concentrations by dilution. (3-30-07)
- iii.** Properly treated for hardness, when necessary. (3-30-07)
- iv.** Properly protected against backflow. (3-30-07)
- v.** Obtained from a location sufficiently downstream of any chemical feed point to assure adequate mixing. (3-30-07)
- i.** Chemical storage facilities shall satisfy the following requirements: (3-30-07)
- i.** Storage tanks and pipelines for liquid chemicals shall be specified for use with individual chemicals and not used for different chemicals. Off-loading areas must be clearly labeled to prevent accidental cross-contamination. (3-30-07)
- ii.** Chemicals shall be stored in covered or unopened shipping containers, unless the chemical is transferred into an approved storage unit. (3-30-07)
- j.** Bulk liquid storage tanks shall comply with the following requirements: (5-8-09)
- i.** A means which is consistent with the nature of the chemical solution shall be provided in a solution tank to maintain a uniform strength of solution. Continuous agitation shall be provided to maintain slurries in suspension. (3-30-07)
- ii.** Means shall be provided to measure the liquid level in the tank. (3-30-07)
- iii.** Bulk liquid storage tanks shall be kept covered. Bulk liquid storage tanks with access openings shall have such openings curbed and fitted with overhanging covers. (5-8-09)



iv. Subsurface locations for bulk liquid storage tanks shall be free from sources of possible contamination, and assure positive drainage for ground waters, accumulated water, chemical spills and overflows. (5-8-09)

v. Bulk liquid storage tanks shall be vented, but shall not vent through vents common with day tanks. Acid storage tanks must be vented to the outside atmosphere, but not through vents in common with day tanks. (5-8-09)

vi. Each bulk liquid storage tank shall be provided with a valved drain, protected against backflow. (5-8-09)

vii. Bulk liquid storage tanks shall have an overflow that is turned downward with the end screened with a twenty-four (24) mesh or similar non-corrodible screen, ~~has~~ *have* a free fall discharge, and ~~is~~ *be* located where noticeable. (5-8-09)( )

viii. Bulk liquid storage tanks shall be provided with secondary containment so that chemicals from equipment failure, spillage, or accidental drainage shall be fully contained. A common receiving basin may be provided for each group of compatible chemicals. The bulk liquid storage tank basin or the common receiving basin shall provide a secondary containment volume sufficient to hold the volume of the largest storage tank. Piping shall be designed to minimize or contain chemical spills in the event of pipe ruptures. (5-8-09)

ix. Where chemical feed is necessary for the protection of the supply, a means to assure continuity of chemical supply while servicing a bulk liquid storage tank shall be provided. (5-8-09)

k. Day tanks are subject to the requirements in Subsections 531.02.k.i. through 531.02.k.iv. For the purposes of Section 531, day tanks are defined as liquid chemical tanks holding no more than a thirty (30) hour chemical supply. (5-8-09)

i. Day tanks shall be provided where bulk storage of liquid chemicals are provided. The Department may allow chemicals to be fed directly from shipping containers no larger than fifty-five (55) gallons. (5-8-09)

ii. Day tanks shall meet all the requirements of Subsection 531.02.j., with the exception of Subsection 531.02.j.viii. Shipping containers do not require overflow pipes or drains as required by Subsection 531.02.j. and are not subject to the requirements of Subsection 531.02.j.viii. (5-8-09)

iii. Where feasible, secondary containment shall be provided so that chemicals from equipment failure, spillage, or accidental drainage of day tanks shall be fully contained. A common receiving basin may be provided for each group of compatible chemicals. The common receiving basin shall provide a secondary containment volume sufficient to hold the volume of the largest storage tank. If secondary containment is not feasible, day tanks shall be located and protective curbing provided so that chemicals from equipment failure, spillage, or accidental drainage of day tanks shall not enter the water in conduits, treatment, or storage basins. Secondary containment is not required for a day tank if an Idaho licensed professional engineer demonstrates

to the Department that the chemical concentration and volume, if spilled, will not be a safety hazard to employees, will not be hazardous to the public health, and will not harm the environment. (5-8-09)

iv. Day tanks and the tank refilling line entry points shall be clearly labeled with the name of the chemical contained. (5-8-09)

l. Provisions shall be made for measuring quantities of chemicals used to prepare feed solutions. (3-30-07)

m. Vents from feeders, storage facilities and equipment exhaust shall discharge to the outside atmosphere above grade and remote from air intakes. (3-30-07)

**03. Chemicals.** Chemical shipping containers shall be fully labeled to include chemical name, purity and concentration, supplier name and address, and evidence of ANSI/NSF certification where applicable. (3-30-07)

**04. Safety Requirements for Chemical Facilities.** (3-30-07)

a. The following requirements apply to chlorine gas feed and storage rooms: (3-30-07)

i. Each storage room shall be enclosed and separated from other operating areas. They shall be constructed in such a manner that all openings between the chlorine room and the remainder of the plant are sealed, and provided with doors equipped with panic hardware, assuring ready means of exit and opening outward only to the building exterior. (3-30-07)

ii. Each room shall be provided with a shatter resistant inspection window installed in an interior wall. (3-30-07)

iii. Each room shall have a ventilating fan with a capacity which provides one (1) complete air change per minute when the room is occupied. Where this is not appropriate due to the size of the room, a lesser rate may be allowed by the Department on a site specific basis. (3-30-07)

iv. The ventilating fan shall take suction near the floor as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets to any rooms or structures. Air inlets shall be through louvers near the ceiling. (3-30-07)

v. Louvers for chlorine room air intake and exhaust shall facilitate airtight closure. (3-30-07)

vi. Separate switches for the fan and lights shall be located outside of the chlorine room and at the inspection window. Outside switches shall be protected from vandalism. A signal light indicating fan operation shall be provided at each entrance when the fan can be controlled from more than one (1) point. (3-30-07)

vii. Vents from feeders and storage shall discharge to the outside atmosphere, above

grade. (3-30-07)

viii. Where provided, floor drains shall discharge to the outside of the building and shall not be connected to other internal or external drainage systems. (3-30-07)

ix. Chlorinator rooms shall be heated to sixty degrees Fahrenheit (60°F) and be protected from excessive heat. Cylinders and gas lines shall be protected from temperatures above that of the feed equipment. (3-30-07)

x. Pressurized chlorine feed lines shall not carry chlorine gas beyond the chlorinator room. (3-30-07)

xi. Critical isolation valves shall be conspicuously marked and access kept unobstructed. (3-30-07)

xii. All chlorine rooms, buildings, and areas shall be posted with a prominent danger sign warning of the presence of chlorine. (3-30-07)

xiii. Full and empty cylinders of chlorine gas shall be isolated from operating areas and stored in definitely assigned places away from elevators, stairs, or gangways. They shall be restrained in position to prevent being knocked over or damaged by passing or falling objects. In addition, they shall be stored in rooms separate from ammonia storage, out of direct sunlight, and at least twenty (20) feet from highly combustible materials. Cylinders shall not be kept in unventilated enclosures such as lockers and cupboards. (3-30-07)

**b.** Where acids and caustics are used, they shall be kept in closed corrosion-resistant shipping containers or storage units. Acids and caustics shall not be handled in open vessels, but shall be pumped in undiluted form from original containers through suitable hose to the point of treatment or to a covered day tank. (3-30-07)

**c.** Sodium chlorite for chlorine dioxide generation. Proposals for the storage and use of sodium chlorite shall be approved by the Department prior to the preparation of final plans and specifications. Provisions shall be made for proper storage and handling of sodium chlorite to eliminate any danger of fire or explosion associated with its oxidizing nature. (3-30-07)

i. Chlorite (sodium chlorite) shall be stored by itself in a separate room. It must be stored away from organic materials. The storage structure shall be constructed of noncombustible materials. If the storage structure must be located in an area where a fire may occur, water must be available to keep the sodium chlorite area cool enough to prevent heat-induced explosive decomposition of the chlorite. (3-30-07)

ii. Care shall be taken to prevent spillage. An emergency plan of operation shall be available for the clean up of any spillage. Storage drums shall be thoroughly flushed prior to recycling or disposal. (3-30-07)

**d.** Where ammonium hydroxide is used, an exhaust fan shall be installed to withdraw air from high points in the room and makeup air shall be allowed to enter at a low point. The feed pump, regulators, and lines shall be fitted with pressure relief vents discharging outside the

building away from any air intake and with water purge lines leading back to the headspace of the bulk storage tank. (3-30-07)

**e.** Where anhydrous ammonia is used, the storage and feed systems (including heaters where required) shall be enclosed and separated from other work areas and constructed of corrosion resistant materials. (3-30-07)

**i.** Pressurized ammonia feed lines shall be restricted to the ammonia room. (3-30-07)

**ii.** An emergency air exhaust system, as described in Subsection 531.04.a., but with an elevated intake, shall be provided in the ammonia storage room. (3-30-07)

**iii.** Leak detection systems shall be fitted in all areas through which ammonia is piped. (3-30-07)

**iv.** Special vacuum breaker/regulator provisions must be made to avoid potentially violent results of backflow of water into cylinders or storage tanks. (3-30-07)

**v.** Consideration shall be given to the provision of an emergency gas scrubber capable of absorbing the entire contents of the largest ammonia storage unit whenever there is a risk to the public as a result of potential ammonia leaks. (3-30-07)

**05. Operator Safety.** The Idaho General Safety and Health Standards, referenced in Subsection 002.02, may be used as guidance in designing facilities to ensure the safety of operators. The following requirements are in addition to the requirements of Subsection 501.12. (3-30-07)

**a.** Respiratory protection equipment, meeting the requirements of the National Institute for Occupational Safety and Health (NIOSH) shall be available where chlorine gas is handled, and shall be stored at a convenient heated location, but not inside any room where chlorine is used or stored. The units shall use compressed air, have at least a thirty (30) minute capacity, and be compatible with or exactly the same as units used by the fire department responsible for the plant. (3-30-07)

**b.** Chlorine leak detection. A bottle of concentrated ammonium hydroxide (fifty-six (56) per cent ammonia solution) shall be available for chlorine leak detection. Where ton containers are used, a leak repair kit approved by the Chlorine Institute shall be provided. (3-30-07)

**c.** Protective equipment. (3-30-07)

**i.** At least one pair of rubber gloves, a dust respirator of a type certified by NIOSH for toxic dusts, an apron or other protective clothing, and goggles or face mask shall be provided for each operator. (3-30-07)

**ii.** A deluge shower and eyewashing device shall be installed where strong acids and alkalis are used or stored. A water holding tank that will allow water to come to room temperature shall be installed in the water line feeding the deluge shower and eyewashing device. Other

methods of water tempering will be considered on an individual basis. (5-8-09)

iii. For chemicals other than strong acids and alkalis, an appropriate eye washing device or station shall be provided. (5-8-09)

iv. Other protective equipment shall be provided as necessary. (3-30-07)

**06. Design Requirements for Specific Applications.** In addition to Subsection 531.01 through 531.03, the following design requirements apply for the specific applications within Subsection 531.06 of this rule. (5-8-09)

**a.** Sodium chlorite for chlorine dioxide generation. Positive displacement feeders shall be provided. Tubing for conveying sodium chlorite or chlorine dioxide solutions shall be Type 1 PVC, polyethylene or materials recommended by the manufacturer. Chemical feeders may be installed in chlorine rooms if sufficient space is provided. Otherwise, facilities meeting the requirements of chlorine rooms shall be provided. Feed lines shall be installed in a manner to prevent formation of gas pockets and shall terminate at a point of positive pressure. Check valves shall be provided to prevent the backflow of chlorine into the sodium chlorite line. (3-30-07)

**b.** Hypochlorite facilities shall meet the following requirements: (5-8-09)

i. Hypochlorite shall be stored in the original shipping containers or in hypochlorite compatible containers. Storage containers or tanks shall be sited out of the sunlight in a cool and ventilated area. (5-8-09)

ii. Stored hypochlorite shall be pumped undiluted to the point of addition. Where dilution is unavoidable, deionized or softened water shall be used. (3-30-07)

iii. Storage areas, tanks, and pipe work shall be designed to avoid the possibility of uncontrolled discharges and a sufficient amount of appropriately selected spill absorbent shall be stored on-site. (3-30-07)

iv. Hypochlorite feeders shall be positive displacement pumps with compatible materials for wetted surfaces. (5-8-09)

v. To avoid air locking in smaller installations, small diameter suction lines shall be used with foot valves and degassing pump heads. In larger installations flooded suction shall be used with pipe work arranged to ease escape of gas bubbles. Calibration tubes or mass flow monitors which allow for direct physical checking of actual feed rates shall be fitted. (3-30-07)

vi. Injectors shall be made removable for regular cleaning where hard water is to be treated. (3-30-07)

**c.** When ammonium sulfate is used, the tank and dosing equipment contact surfaces shall be made of corrosion resistant non-metallic materials. Provision shall be made for removal of the agitator after dissolving the solid. The tank shall be fitted with a lid and vented outdoors. Injection of the solution should take place in the center of treated water flow at a location where there is high velocity movement. (3-30-07)

**d.** When aqua ammonia (ammonium hydroxide) is used, the feed pumps and storage shall be enclosed and separated from other operating areas. The aqua ammonia room shall be equipped as required for chlorinator rooms with the following changes: (3-30-07)

**i.** A corrosion resistant, closed, unpressurized tank shall be used for bulk storage, vented through an inert liquid trap to a high point outside and an incompatible connector, or lockout provisions shall be made to prevent accidental addition of other chemicals to the storage tank. (3-30-07)

**ii.** The storage tank shall be designed to avoid conditions where temperature increases cause the ammonia vapor pressure over the aqua ammonia to exceed atmospheric pressure. This capability can be provided by cooling/refrigeration or diluting or mixing the contents with water without opening the system. (5-8-09)

**iii.** The aqua ammonia shall be conveyed direct from storage to the treated water stream injector without the use of a carrier water stream unless the carrier stream is softened. (3-30-07)

**iv.** The point of delivery to the main water stream shall be placed in a region of turbulent water flow. (3-30-07)

**v.** Provisions shall be made for easy access for removal of calcium scale deposits from the injector. (3-30-07)

**532. FACILITY AND DESIGN STANDARDS: DESIGN STANDARDS FOR SOFTENING.**

The softening process selected must be based upon the mineral qualities of the raw water and the desired finished water quality in conjunction with requirements for disposal of sludge or brine waste, cost of plant, cost of chemicals and plant location. Applicability of the process chosen shall be demonstrated. (3-30-07)

**01. Lime or Lime-Soda Process.** Rapid mix, flocculation, and sedimentation processes shall meet the requirements of Section 520. In addition the following requirements must be met: (3-30-07)

**a.** When split treatment is used, an accurate means of measuring and splitting the flow must be provided. (3-30-07)

**b.** Rapid mix basins must provide not more than thirty (30) seconds detention time with adequate velocity gradients to keep the lime particles dispersed. (3-30-07)

**c.** Equipment for stabilization of water softened by the lime or lime-soda process is required, see Section 537. (3-30-07)

**d.** Mechanical sludge removal equipment shall be provided in the sedimentation basin. (3-30-07)

- e. Provisions must be included for proper disposal of softening sludges; see Section 540. (3-30-07)
- f. The plant processes must be manually started following shut-down. (3-30-07)
- 02. Cation Exchange Process.** (3-30-07)
- a. Pre-treatment is required when the content of iron, manganese, or a combination of the two, is one milligram per liter (1 mg/l) or more. (3-30-07)
- b. The units may be of pressure or gravity type, of either an upflow or downflow design. Automatic regeneration based on volume of water softened shall be used unless manual regeneration is justified and is approved by the Department. A manual override shall be provided on all automatic controls. (3-30-07)
- c. Rate-of-flow controllers or the equivalent shall be used to control the hydraulic loading of cation exchange units. (3-30-07)
- d. The bottoms, strainer systems and support for the exchange resin shall conform to the criteria provided for rapid rate gravity filters in Section 521. (3-30-07)
- e. Cross Connection Control. Backwash, rinse and air relief discharge pipes shall be installed in such a manner as to prevent any possibility of back-siphonage. (3-30-07)
- f. A bypass must be provided around softening units to produce a blended water of desirable hardness. Totalizing meters must be installed on the bypass line and on each softener unit. The bypass line must have a shutoff valve. (3-30-07)
- g. When the applied water contains a chlorine residual, the cation exchange resin shall be a type that is not damaged by residual chlorine. (3-30-07)
- h. Smooth-nose sampling taps must be provided for the collection of representative samples. The taps shall be located to provide for sampling of the softener influent, effluent, blended water, and on the brine tank discharge piping. The sampling taps for the blended water shall be at least twenty (20) feet downstream from the point of blending. Petcocks are not acceptable as sampling taps. (3-30-07)
- i. Brine and salt storage tanks shall meet the following requirements: (3-30-07)
- i. Salt dissolving or brine tanks and wet salt storage tanks must be covered and must be corrosion-resistant. (3-30-07)
- ii. The make-up water inlet must be protected from back-siphonage. (3-30-07)
- iii. Wet salt storage basins must be equipped with manholes or hatchways for access and for direct dumping of salt from truck or railcar. Openings must be provided with raised curbs and watertight covers having overlapping edges similar to those required for finished water reservoirs. (3-30-07)

- iv. Overflows, where provided, must be protected with ~~corrosion resistant~~ **twenty-four (24) mesh or similar non-corrodible** screens, and must terminate with either a turned down bend having a proper free fall discharge or a self-closing flap valve. ~~(3-30-07)~~( )
- v. The salt shall be supported on graduated layers of gravel placed over a brine collection system. (3-30-07)
- vi. Alternative designs which are conducive to frequent cleaning of the wet salt storage tank may be considered. (3-30-07)
- vii. An eductor may be used to transfer brine from the brine tank to the softeners. If a pump is used, a brine measuring tank or means of metering shall be provided to obtain the proper dilution. (3-30-07)
- j. Suitable disposal must be provided for brine waste; see Section 540. Where the volume of spent brine must be reduced, consideration may be given to using a part of the spent liquid concentrate for a subsequent regeneration. (3-30-07)
- k. Pipes and contact materials must be resistant to the aggressiveness of salt. Plastic and red brass are acceptable piping materials. Steel and concrete must be coated with a non-leaching protective coating which is compatible with salt and brine. (3-30-07)
- l. Bagged salt and dry bulk salt storage shall be enclosed and separated from other operating areas in order to prevent damage to equipment. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**534. FACILITY AND DESIGN STANDARDS: AERATION PROCESSES.**

Public water systems that install aeration treatment are subject to the Rules of the Department of Environmental Quality, IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." The system owner or the design engineer shall contact one of the Department's regional offices for information on obtaining a permit or an exemption for the emissions resulting from the aeration process. General information may be found at [http://www.deq.idaho.gov/air/prog\\_issues/toxics/overview.cfm#tap](http://www.deq.idaho.gov/air/prog_issues/toxics/overview.cfm#tap). (3-30-07)

- 01. Natural Draft Aeration.** Design shall provide: (3-30-07)
- a. Perforations in the distribution pan three sixteenths to one-half ( $3/16 - 1/2$ ) inches in diameter, spaced one to three (1-3) inches on centers to maintain a six (6) inch water depth. (3-30-07)
- b. For distribution of water uniformly over the top tray. (3-30-07)
- c. Discharge through a series of three (3) or more trays with separation of trays not



less than twelve (12) inches. (3-30-07)

**d.** Loading at a rate of one to five (1-5) gallons per minute for each square foot of total tray area. (3-30-07)

**e.** Trays with slotted, heavy wire (1/2 inch openings) mesh or perforated bottoms. (3-30-07)

**f.** Construction of durable material resistant to aggressiveness of the water and dissolved gases. (3-30-07)

**g.** Protection from insects by twenty-four (24) mesh or similar non-corrodible screen. ~~(3-30-07)~~( )

**02. Forced or Induced Draft Aeration.** Devices shall be designed to: (3-30-07)

**a.** Include a blower with a weatherproof motor in a tight housing and screened enclosure. (3-30-07)

**b.** Ensure adequate counter current of air through the enclosed aerator column. (3-30-07)

**c.** Exhaust air directly to the outside atmosphere. (3-30-07)

**d.** Include a down-turned and twenty-four (24) mesh or similar non-corrodible screened air outlet and inlet. ~~(3-30-07)~~( )

**e.** Be such that air introduced in the column shall be as free from obnoxious fumes, dust, and dirt as possible. (3-30-07)

**f.** Be such that sections of the aerator can be easily reached or removed for maintenance of the interior or installed in a separate aerator room. (3-30-07)

**g.** Provide loading at a rate of one to five (1-5) gallons per minute for each square foot of total tray area. (3-30-07)

**h.** Ensure that the water outlet is adequately sealed to prevent unwarranted loss of air. (3-30-07)

**i.** Discharge through a series of five (5) or more trays with separation of trays not less than six (6) inches or as approved by the Department. (3-30-07)

**j.** Provide distribution of water uniformly over the top tray. (3-30-07)

**k.** Be of durable material resistant to the aggressiveness of the water and dissolved gases. (3-30-07)

**03. Spray Aeration.** Design shall provide: (3-30-07)

- a. A hydraulic head of between five (5) and twenty-five (25) feet. (3-30-07)
- b. Nozzles, with the size, number, and spacing of the nozzles being dependent on the flowrate, space, and the amount of head available. (3-30-07)
- c. Nozzle diameters in the range of one (1) to one and one-half (1.5) inches to minimize clogging. (3-30-07)
- d. An enclosed basin to contain the spray. Any openings for ventilation must be protected with a twenty-four (24) mesh or similar non-corrodible screen. ~~(3-30-07)~~( )

**04. Pressure Aeration.** Pressure aeration may be used for oxidation purposes only if the pilot plant study indicates the method is applicable; it is not acceptable for removal of dissolved gases. Filters following pressure aeration must have adequate exhaust devices for release of air. Pressure aeration devices shall be designed to give thorough mixing of compressed air with water being treated and provide twenty-four (24) mesh or similar non-corrodible screened and filtered air, free of obnoxious fumes, dust, dirt and other contaminants. ~~(3-30-07)~~( )

**05. Packed Tower Aeration.** Packed tower aeration may be used for the removal of volatile organic chemicals, trihalomethanes, carbon dioxide, and radon. Final design shall be based on the results of pilot studies and be approved by the Department. (3-30-07)

- a. Process design criteria. (3-30-07)
  - i. Justification for the design parameters selected (i.e., height and diameter of unit, air to water ratio, packing depth, surface loading rate, etc.) shall be provided to the Department for review. The pilot study shall evaluate a variety of loading rates and air to water ratios at the peak contaminant concentration. Special consideration shall be given to removal efficiencies when multiple contaminations occur. Where there is considerable past performance data on the contaminant to be treated and there is a concentration level similar to previous projects, the Department may approve the process design based on use of appropriate calculations without pilot testing. (3-30-07)
  - ii. The tower shall be designed to reduce contaminants to below the maximum contaminant level and to the lowest practical level. (3-30-07)
  - iii. The type and size of the packing used in the full scale unit shall be the same as that used in the pilot study. (3-30-07)
  - iv. The maximum air to water ratio for which credit will be given is 80:1. (3-30-07)
  - v. The design shall consider potential fouling problems from calcium carbonate and iron precipitation and from bacterial growth. It may be necessary to provide pretreatment. Disinfection capability shall be provided prior to and after packed tower aeration. (3-30-07)
  - vi. The effects of temperature shall be considered. (3-30-07)

- vii. Redundant packed tower aeration capacity at the design flowrate shall be provided. (3-30-07)
- b.** The tower may be constructed of stainless steel, concrete, aluminum, fiberglass or plastic. Uncoated carbon steel is not allowed. Towers constructed of light-weight materials shall be provided with adequate support to prevent damage from wind. Packing materials shall be resistant to the aggressiveness of the water, dissolved gases and cleaning materials and shall be suitable for contact with potable water. (3-30-07)
- c.** Water flow system. (3-30-07)
- i. Water shall be distributed uniformly at the top of the tower using spray nozzles or orifice-type distributor trays that prevent short circuiting. (3-30-07)
- ii. A mist eliminator shall be provided above the water distributor system. (3-30-07)
- iii. A side wiper redistribution ring shall be provided at least every ten (10) feet in order to prevent water channeling along the tower wall and short circuiting. (3-30-07)
- iv. Sample taps shall be provided in the influent and effluent piping. The sample taps shall satisfy the requirements of Subsection 501.09. (5-8-09)
- v. The effluent sump, if provided, shall have easy access for cleaning purposes and be equipped with a drain valve. The drain shall not be connected directly to any storm or sanitary sewer. (3-30-07)
- vi. The design shall prevent freezing of the influent riser and effluent piping when the unit is not operating. (3-30-07)
- vii. The water flow to each tower shall be metered. (3-30-07)
- viii. An overflow line shall be provided which discharges twelve (12) to fourteen (14) inches above a splash pad or drainage inlet. Proper drainage shall be provided to prevent flooding of the area. (3-30-07)
- ix. Means shall be provided to prevent flooding of the air blower. (3-30-07)
- d.** Air flow system. (3-30-07)
- i. The air inlet to the blower and the tower discharge vent shall be down-turned and protected with a non-corrodible twenty-four (24) mesh screen to prevent contamination from extraneous matter. (3-30-07)
- ii. The air inlet shall be in a protected location. (3-30-07)
- iii. An air flow meter shall be provided on the influent air line or an alternative method to determine the air flow shall be provided. (3-30-07)

- iv. A positive air flow sensing device and a pressure gauge must be installed on the air influent line. The positive air flow sensing device must be a part of an automatic control system which will turn off the influent water if positive air flow is not detected. The pressure gauge will serve as an indicator of fouling buildup. (3-30-07)
- v. A backup motor for the air blower must be readily available. (3-30-07)
- e. Other features that shall be provided: (3-30-07)
  - i. A sufficient number of access ports with a minimum diameter of twenty-four (24) inches to facilitate inspection, media replacement, media cleaning and maintenance of the interior. (3-30-07)
  - ii. A method of cleaning the packing material when iron, manganese, or calcium carbonate fouling may occur. (3-30-07)
  - iii. Tower effluent collection and pumping wells constructed to clearwell standards. (3-30-07)
  - iv. Provisions for extending the tower height without major reconstruction. (3-30-07)
  - v. No bypass shall be provided unless specifically approved by the Department. (3-30-07)
  - vi. Disinfection and adequate contact time after the water has passed through the tower and prior to the distribution system. (3-30-07)
  - vii. Adequate packing support to allow free flow of water and to prevent deformation with deep packing heights. (3-30-07)
  - viii. Operation of the blower and disinfectant feeder equipment during power failures. (3-30-07)
  - ix. Adequate foundation to support the tower and lateral support to prevent overturning due to wind loading. (3-30-07)
  - x. Fencing and locking gate to prevent vandalism. (3-30-07)
  - xi. An access ladder with safety cage for inspection of the aerator including the exhaust port and de-mister. (3-30-07)
  - xii. Electrical interconnection between blower, disinfectant feeder and supply pump. (3-30-07)

**06. Other Methods of Aeration.** Other methods of aeration may be used if applicable to the treatment needs. Such methods include but are not restricted to spraying, diffused air, cascades and mechanical aeration. The treatment processes are subject to the approval of the Department. (3-30-07)

**07. Protection of Aerators.** All aerators except those discharging to lime softening or clarification plants shall be protected from contamination by birds, insects, wind borne debris, rainfall and water draining off the exterior of the aerator. (3-30-07)

**08. Disinfection.** Ground water supplies exposed to the atmosphere by aeration must receive disinfection as the minimum additional treatment. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**541. FACILITY AND DESIGN STANDARDS - PUMPING FACILITIES.**

Pumping facilities shall be designed to maintain the sanitary quality of pumped water. (3-30-07)

**01. Pump Houses.** The following requirements apply to pump houses as defined in Section 003 unless it can be shown that some or all of these requirements are not needed to protect the combination of system components in a given structure: (3-30-07)

**a.** Pump houses shall be readily accessible for operation, maintenance, and repair at all times and under all weather conditions unless permitted to be out of service for a period of inaccessibility. (3-30-07)

**b.** Pump houses shall be protected from flooding and shall be adequately drained. The ground surface shall be graded so as to lead surface drainage away from the pump house. The floor surface shall be at least six (6) inches above the final ground surface. (3-30-07)

**c.** Pump houses shall be of durable construction, fire and weather resistant, and with outward-opening doors. All underground structures shall be waterproofed. (3-30-07)

**d.** Provisions shall be made for adequate heating for the comfort of the operator and the safe and efficient operation of the equipment. In pump houses not occupied by personnel, only enough heat need be provided to prevent freezing of equipment or treatment processes. (3-30-07)

**e.** Ventilation shall conform to existing local and/or state codes. Adequate ventilation shall be provided for all pumping stations for operator comfort and dissipation of excess heat and moisture from the equipment. In all cases, measures must be taken to minimize corrosion of metallic and electrical components. (3-30-07)

**f.** Pump houses shall be provided with a locking door or access to prohibit unauthorized entrance and shall be protected to prevent vandalism and entrance by animals. Plans and specifications for pump houses must provide enough detail to enable the reviewing engineer to determine that the facility is secure, safe, accessible, and that it conforms to electrical and plumbing codes. (3-30-07)

**g.** Pump houses shall be kept clean and in good repair and shall not be used to store toxic or hazardous materials other than those materials required for treatment processes.

(3-30-07)

**h.** A suitable outlet shall be provided for drainage from pump glands without discharging onto the floor. (3-30-07)

**i.** Floor drains shall not be connected to sewers, storm drains, chlorination room drains, or any other source of contamination. Sumps for pump house floor drains shall not be closer than thirty (30) feet from any well. (3-30-07)

**j.** Adequate space shall be provided for the installation of potential additional units and for the safe and efficient servicing of all equipment. (5-8-09)

**k.** Suction basins shall be watertight, have floors sloped to permit removal of water and settled solids, be covered or otherwise protected against contamination, and have two (2) pumping compartments or other means to allow the suction basin to be taken out of service for inspection maintenance or repair. (3-30-07)

**l.** Pump houses shall be designed to allow efficient equipment servicing. Crain-ways, hoist beams, eyebolts, or other adequate facilities for servicing or removal of pumps, motors or other heavy equipment shall be provided. Openings in floors, roofs or wherever else shall be provided as needed for removal of heavy or bulky equipment. (3-30-07)

**m.** All remote controlled stations shall be electrically operated and controlled and shall have signaling apparatus of proven performance. Signaling apparatus shall report automatically when the station is out of service. (3-30-07)

**n.** Any threaded hose bib installed in the pump house must be equipped with an appropriate backflow prevention device. (3-30-07)

**02. Pumping Units.** At least two (2) pumping units shall be provided for raw water and surface source pumps. Pumps using seals containing mercury shall not be used in public drinking water system facilities. With any pump out of service, the remaining pump or pumps shall be capable of providing the peak hour demand of the system or a minimum of the maximum day demand plus equalization storage. See Subsection 501.18 for general design requirements concerning fire flow capacity and Subsection 501.07 regarding reliability and emergency operation. The pumping units shall meet the following requirements: (5-8-09)

**a.** The pumps shall have ample capacity to supply the maximum demand against the required pressure without dangerous overloading. (3-30-07)

**b.** The pumps shall be driven by prime movers able to meet the maximum horsepower condition of the pumps. (3-30-07)

**c.** The pumps shall be provided with readily available spare parts and tools. (3-30-07)

**d.** The pumps shall be served by control equipment that has proper heater and overload protection for air temperature encountered. (3-30-07)

e. Suction lift shall be avoided if possible. When suction lift is used, it shall be within the limits allowed by the manufacturer of the pumps, and provision shall be made for priming the pumps. (3-30-07)

f. Prime water must not be of lesser sanitary quality than that of the water being pumped. Means shall be provided to prevent either backpressure or backsiphonage backflow. When an air-operated ejector is used, the twenty-four (24) mesh or similar non-corrodible screened intake shall draw clean air from a point at least ten (10) feet above the ground or other source of possible contamination, unless the air is filtered by an apparatus approved by the reviewing authority. Vacuum priming may be used. (~~3-30-07~~)(    )

**03. Appurtenances.** The following appurtenances shall be provided for all water pumps ~~with the exception of well pumps.~~ The Additional requirements ~~for~~ specific to well pumps are provided in Section 511. (~~3-30-07~~)(    )

a. Pumps shall be adequately protected against freezing and valved to permit satisfactory operation, maintenance, and repair of the equipment. If foot valves are necessary, they shall have a net valve area of at least two and one-half (2.5) times the area of the suction pipe and they shall be screened. Each pump shall have an accessible check valve on the discharge side between the pump and the shut-off valve or a combination valve that performs both control valve and check valve functions. Surge relief measures shall be designed to minimize hydraulic transients. (~~5-8-09~~)(    )

b. In general, piping shall be designed so that it will have watertight joints, be protected against surge or water hammer, be provided with suitable restraints where necessary, be designed so that friction losses will be minimized, and not be subject to contamination. Each pump shall have an individual suction line or the suction lines shall be manifolded such that they will ensure similar hydraulic and operating conditions. (3-30-07)

c. Each pump station shall have a standard pressure gauge on its discharge line and suction line. (3-30-07)

d. Water seals shall not be supplied with water of a lesser sanitary quality than that of the water being pumped. Where pumps are sealed with potable water and are pumping water of lesser sanitary quality, the seal shall: (3-30-07)

i. Be provided with either an approved reduced pressure principle backflow preventer or a break tank open to atmospheric pressure, (3-30-07)

ii. Where a break tank is provided, have an air gap of at least six (6) inches or two (2) pipe diameters, whichever is greater, between the feeder line and the flood rim of the tank. (3-30-07)

e. Pumps, their prime movers, and accessories shall be controlled in such a manner that they will operate at rated capacity without dangerous overload. Where two (2) or more pumps are installed, provision shall be made for alternation. Provision shall be made to prevent energizing the motor in the event of a backspin cycle. Equipment shall be provided or other

arrangements made to prevent surge pressures from activating controls which switch on pumps or activate other equipment outside the normal design cycle of operation. (3-30-07)

**04. Booster Pumps.** In addition to other applicable requirements in Section 541, booster pumps must comply with the following: (3-30-07)

**a.** In-line booster pumps shall maintain an operating pressure that is consistent with the requirements specified in Subsection 552.01, and shall be supplied with an automatic cutoff when intake pressure is less than or equal to five (5) psi. (3-30-07)

**b.** Booster pumps with a suction line directly connected to any storage reservoirs shall be protected by an automatic cutoff to prevent pump damage and avoid excessive reservoir drawdown. (3-30-07)

**c.** Each booster pumping station shall contain not less than two (2) pumps with capacities such that peak hour demand, or a minimum of the maximum day demand plus equalization storage, can be satisfied with any pump out of service. See Subsection 501.18 for general design requirements concerning fire flow capacity. (5-8-09)

#### **542. FACILITY AND DESIGN STANDARDS - DISTRIBUTION SYSTEM.**

**01. Protection from Contamination.** The distribution system shall be protected from contamination and be designed to prevent contamination by steam condensate or cooling water from engine jackets or other heat exchange devices. (3-30-07)

**02. Installation of Water Mains.** Division 400 of "Idaho Standards for Public Works Construction," referenced in Subsection 002.02, may be used as guidance for installation of water mains. In addition, the following provisions shall apply: (3-30-07)

**a.** Installed pipe shall be pressure tested and leakage tested in accordance with the applicable AWWA Standards, incorporated by reference into these rules at Subsection 002.01. (3-30-07)

**b.** New, cleaned, and repaired water mains shall be disinfected in accordance with AWWA Standard C651, incorporated by reference into these rules at Subsection 002.01. The specifications shall include detailed procedures for the adequate flushing, disinfection, and microbiological testing of all water mains. (3-30-07)

**c.** In areas where aggressive soil conditions are suspected or known to exist, analyses shall be performed to determine the actual aggressiveness of the soil. If soils are found to be aggressive, action shall be taken to protect metallic joint restraints and the water main, such as encasement in polyethylene, provision of cathodic protection, or use of corrosion resistant materials. (3-30-07)

**d.** The Department must approve any interconnection between potable water supplies, taking into account differences in water quality between the two systems. (3-30-07)

**e.** A continuous and uniform bedding shall be provided in the trench for all buried



pipe. Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. Stones found in the trench shall be removed for a depth of at least six (6) inches below the bottom of the pipe. (3-30-07)

**f.** Water mains shall be covered with sufficient earth or other insulation to prevent freezing. (3-30-07)

**g.** All tees, bends, plugs and hydrants shall be provided with reaction blocking, tie rods or joints designed to prevent movement. (3-30-07)

**03. Pressure Relief Valves.** All pumps connected directly to the distribution system shall be designed in conjunction with a water pressure relief valve of type, size, and material approved by the Department unless the Department approves another method that will prevent excessive pressure development. (3-30-07)

**04. Flow Meter Required.** Unless otherwise approved by the Department, All source pumps and booster pumps connected directly to the distribution system shall have an instantaneous and totalizing flow meter, equipped with nonvolatile memory, installed in accordance with manufacture's specifications, ~~unless deemed unnecessary by the Department in a particular application. The Department may require larger water systems to provide a means of automatically recording the total water pumped.~~ (3-30-07)( )

**05. Pipe and Jointing Materials.** Pipe and jointing materials comply with the standards set forth in Subsection 501.01. Pipe shall be manufactured of materials resistant internally and externally to corrosion and not imparting tastes, odors, color, or any contaminant into the system. Where distribution systems are installed in areas of ground water contaminated by organic compounds: (3-30-07)

**a.** Pipe and joint materials which do not allow permeation of the organic compounds shall be used; and (4-11-06)

**b.** Non-permeable materials shall be used for all portions of the system including pipe, joint materials, hydrant leads, and service connections. (4-11-06)

**06. Size of Water Mains.** When fire hydrants are provided, they shall not be connected to water mains smaller than six (6) inches in diameter, and fire hydrants shall not be installed unless fireflow volumes are available. If fire flow is not provided, water mains shall be no less than three (3) inches in diameter. Any departure from this minimum standard shall be supported by hydraulic analysis and detailed projections of water use. (3-30-07)

**07. Separation of Potable and Non-Potable Pipelines.** The relation between potable and non-potable pipelines shall be as described in Subsections 542.07.a. through 542.07.c. The Department will use the Memorandum of Understanding with the Plumbing Bureau as guidance in determining the relative responsibilities for reviewing service lines. The conditions of Subsections 542.07.a. and 542.07.b. shall apply to all potable services constructed or reconstructed after April 15, 2007 and where the Department or the QLPE is the reviewing authority. (5-8-09)

- a.** Parallel installation requirements. (5-8-09)
- i.** Potable mains in relation to non-potable mains. (5-8-09)
- (1) Greater than ten (10) feet separation: no additional requirements based on separation distance. (5-8-09)
- (2) Ten (10) feet to six (6) feet separation: separate trenches, with potable main above non-potable main, and non-potable main constructed with potable water class pipe. (5-8-09)
- (3) Less than six (6) feet separation: design engineer to submit data to the Department for review and approval showing that this installation will protect public health and the environment and non-potable main to be constructed of potable water class pipe. (4-11-06)
- (4) Non-potable mains are prohibited from being located in the same trench as potable mains. (3-30-07)
- (5) Pressure ~~sewage~~ **wastewater** mains **or other pressurized mains or lines containing non-potable fluids** shall be no closer horizontally than ten (10) feet from potable mains. ~~(3-30-07)~~( )
- ii.** New potable services in relation to non-potable services, new potable services in relation to non-potable mains, and new non-potable services in relation to potable mains. (5-8-09)
- (1) Greater than six (6) feet separation: no additional requirements based on separation distance. (5-8-09)
- (2) Less than six (6) feet separation: design engineer to submit data that this installation will protect public health and the environment and non-potable service constructed with potable water class pipe. (5-8-09)
- (3) New potable services are prohibited from being located in the same trench as non-potable mains or non-potable services. (5-8-09)
- b.** Requirements for potable water mains or services crossing non-potable water mains or services. For the purposes of this section, the term “pipeline” applies to both mains and services. (5-8-09)
- i.** If there is eighteen (18) inches or more vertical separation with the potable water pipeline above the non-potable pipeline, then the ~~non~~-potable pipeline joints must be as far as possible from the non-potable water pipeline. ~~(5-8-09)~~( )
- ii.** If there is eighteen (18) inches or more vertical separation with the potable water pipeline below the non-potable pipeline, then the potable pipeline joints must be as far as possible from the non-potable pipeline, and the non-potable pipeline must be supported through the crossing to prevent settling. ~~(5-8-09)~~( )
- iii.** Less than eighteen (18) inches vertical separation: (5-8-09)

(1) Potable pipeline joint to be as far as possible from the non-potable pipeline; and either: (5-8-09)

(a) Non-potable pipeline constructed with potable water class pipe for a minimum of ten (10) feet either side of potable pipeline with a single twenty (20) foot section of potable water class pipe centered on the crossing; or (5-8-09)

(b) Sleeve non-potable or potable pipeline with potable water class pipe for ten (10) feet either side of crossing. Use of hydraulic cementitious materials such as concrete, controlled density fill, and concrete slurry encasement is not allowed as a substitute for sleeving. (5-8-09)

(2) If potable pipeline is below non-potable pipeline, the non-potable pipeline must also be supported through the crossing to prevent settling. (5-8-09)

iv. Pressure ~~sewage~~ **wastewater** mains or other pressurized mains or lines containing non-potable fluids shall be no closer vertically than eighteen (18) inches from potable mains. ~~(5-8-09)~~( )

c. Existing potable services in relation to new non-potable mains, existing non-potable services in relation to new potable mains, and existing potable services in relation to new non-potable services shall meet the requirements of Subsection 542.07.b., where practical, based on cost, construction factors, and public health significance. If the Department determines that there are significant health concerns with these services, such as where a large existing service serves an apartment building or a shopping center, then the design shall conform with Subsection 542.07.b. (5-8-09)

**08. Separation from Subsurface Wastewater Systems and Other Sources of Contamination.** A minimum horizontal distance of twenty-five (25) feet shall be maintained between any potable water pipe and a septic tank or subsurface wastewater disposal system. Guidance on separation from other potential sources of contamination, such as stormwater facilities, may be found at [www.deq.idaho.gov/water/assist\\_business/engineers/checklists/guidance\\_separation\\_distances.pdf](http://www.deq.idaho.gov/water/assist_business/engineers/checklists/guidance_separation_distances.pdf). (3-30-07)

**09. Dead End Mains.** All dead end water mains shall be equipped with a means of flushing and shall be flushed at least semiannually at a water velocity of two and one-half (2.5) feet per second. (3-30-07)

a. Dead ends shall be minimized by making appropriate tie-ins whenever practical in order to provide increased reliability of service and reduce head loss. (4-11-06)

b. No water main flushing device shall be directly connected to any sewer. (4-11-06)

c. Stub outs for future main connections shall meet all requirements for dead end mains listed in Subsection 542.09 as determined by the Department. Flushing devices may be temporary in nature. ( )

**10. Repair of Leaks.** Leaking water mains shall be repaired or replaced upon

discovery and disinfected in accordance with American Water Works Association (AWWA) Standards, incorporated by reference into these rules at Subsection 002.01. (3-30-07)

**11. Separation from Structures.** Water mains shall be separated by at least five (5) feet from buildings, industrial facilities, and other permanent structures. (3-30-07)

**12. Meter Vault Required.** All new public water systems shall include a meter vault at each service connection. A lockable shut-off valve shall be installed in the meter vault. This requirement shall also apply to extensions of the distribution system of existing public water systems. (3-30-07)

**13. Minimum Pressure at Building Sites.** Any public water system constructed or undergoing material modification where topographical relief may affect water pressure at the customers' premises shall provide the Department with an analysis which demonstrates that the pressure at each designated building site will be at least forty (40) psi, based on dynamic pressure in the main, as set forth in Subsections 552.01.b.i. and 552.01.b.ii., plus a static compensation from the elevation of the main to the elevation of each building site. (5-8-09)

**a.** If forty (40) psi cannot be provided at each designated building site, the Department may require that reasonable effort be made to provide notification to existing and potential customers of the expected pressure. (5-3-03)

**b.** The Department will not authorize a service connection at any designated building site where analysis indicates that pressure will be less than twenty (20) psi static pressure (or twenty-six point five (26.5) psi for two (2) story buildings). (5-3-03)

**14. Isolation Valves.** A sufficient number of valves shall be provided on water mains to minimize inconvenience and sanitary hazards during repairs. (3-30-07)

**15. Air Valves.** At high points in water mains where air can accumulate, provisions shall be made to remove the air by means of air release and vacuum relief valves or combination air release/vacuum relief valves. Air release valves, vacuum relief valves, or combination air release/vacuum relief valves may not be required if vacuum relief and air release functions in the pipeline can be adequately handled by approved appurtenances such as fire hydrants. (5-8-09)

**a.** The open end of an air valve shall be extended to at least one (1) foot above grade and provided with a twenty-four (24) mesh or similar non-corrodible screened, downward-facing elbow. When the air vent on an air relief valve cannot be practically installed above ground, the vent may be below grade provided that the valve is manually operated and the air vent is extended to the top of the valve vault and provided with a twenty-four (24) mesh or similar non-corrodible screened, downward-facing elbow. In addition, for below ground vents, the valve vault must be rated for appropriate traffic loading in traffic areas and the vault drained to daylight or provided with adequate drainage to prevent flooding of the vault. (5-8-09)( )

**b.** Discharge piping from air *relief* valves or combination air release/vacuum relief valves shall not connect directly to any storm drain, storm sewer, or sanitary sewer. (5-8-09)( )

**16. Backflow Protection.** Automatic air relief valves shall be equipped with a means of backflow protection. (3-30-07)

**17. Surface Water Crossings.** For the purposes of Subsection 542.17, surface water is defined as all surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. This includes, but is not limited to, rivers, streams, canals, ditches, lakes, and ponds. Surface water crossings, whether over or under water, shall be constructed as follows: (5-8-09)

**a.** Above water crossings: the pipe shall be adequately supported and anchored, protected from damage and freezing, and shall be accessible for repair or replacement. (4-11-06)

**b.** Under water crossings: A minimum cover of two (2) feet shall be provided over the pipe. When crossing a water course that is greater than fifteen (15) feet in width, the following shall be provided: (4-11-06)

**i.** The pipe shall be of special construction, having flexible, restrained, or welded water-tight joints; and (4-11-06)

**ii.** Valves shall be provided at both ends of water crossings so that the section can be isolated for testing or repair; the valves shall be easily accessible and not subject to flooding; and (4-11-06)

**iii.** Permanent taps or other provisions to allow insertion of a small meter to determine leakage and obtain water samples shall be made on each side of the valve closest to the supply source. (4-11-06)

**543. FACILITY AND DESIGN STANDARDS - CROSS CONNECTION CONTROL.**

There shall be no connection between the distribution system and any pipes, pumps, hydrants, water loading stations, or tanks whereby unsafe water or other contaminating materials may be discharged or drawn into a public water system. The water purveyor is responsible through its cross connection control program to take reasonable and prudent measures to protect the water system against contamination and pollution from cross connections through premises isolation or containment, internal or in-plant isolation, fixture protection, or some combination of premises isolation, internal isolation, and fixture protection. (5-8-09)( )

**01. Testable Assemblies.** All double check valve backflow prevention assemblies, reduced pressure principle backflow prevention assemblies, spill resistant vacuum breakers, and pressure vacuum breakers used must pass a performance test conducted by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC Foundation) and be included on the USC Foundation "List of Approved Assemblies." ~~In addition all double check valve backflow prevention assemblies and reduced pressure principle backflow prevention assemblies used shall meet American Water Works Association (AWWA) Standards C-510 or C-511, incorporated by reference into these rules at Subsection 002.01, or an equivalent standard approved by the Department.~~ (5-8-09)( )

**02. Atmospheric Vacuum Breakers.** All atmospheric vacuum breakers used shall be marked approved either by the International Association of Plumbing and Mechanical Officials

(IAPMO) or by the American Society of Sanitation Engineers (ASSE). (5-8-09)

**03. ~~Resilient Seated Shutoff Valves~~ Replacement Parts and Components.** All replacement parts and components, including resilient seated shutoff valves, shall meet original specifications or otherwise be approved by the USC Foundation as replacement parts or components for use ~~d when~~ on double check valve backflow prevention assemblies, reduced pressure principle backflow prevention assemblies, and pressure vacuum breakers ~~are installed~~.  
(3-30-07)( )

**04. Assembly Selection.** Appropriate and adequate backflow prevention assemblies types for various facilities, fixtures, equipment, and uses of water ~~must~~ should be selected either from the Pacific Northwest Cross Connection Control Manual, the Uniform Plumbing Code, the Environmental Protection Agency's AWWA Recommended Practice for Backflow Prevention and Cross Connection Control Manual (M14), the USC Foundation Manual of Cross Connection Control, or other sources deemed acceptable by the Department. The selected assembly manufacturer model number must be included on the USC Foundation "List of Approved Assemblies" and must comply with local ordinances. (5-8-09)( )

#### 544. FACILITY AND DESIGN STANDARDS: GENERAL DESIGN OF FINISHED WATER STORAGE.

The materials and designs used for finished water storage structures shall provide stability and durability as well as protect the quality of the stored water. Finished water storage structures shall be designed to maintain water circulation and prevent water stagnation. Steel structures and facilities such as steel tanks, standpipes, reservoirs, and elevated tanks shall be designed and constructed in accordance with applicable AWWA Standards, incorporated by reference into these rules at Subsection 002.01. Other materials of construction are acceptable when properly designed to meet the requirements of Section 544. (5-8-09)

**01. Sizing.** Storage facilities shall have sufficient capacity, as determined from engineering studies that consider peak flows, fire flow capacity, and analysis of the need for various components of finished storage as defined under the term "Components of Finished Water Storage" in Section 003. The requirement for storage may be reduced when the source and treatment facilities have sufficient capacity with standby power to supply peak demands of the system. (3-30-07)

**02. Location.** Storage facilities shall be located in a manner that protects against contamination, ensures structural stability, protects against flooding, and provides year-round access by vehicles and equipment needed for repair and maintenance. (5-8-09)

**a.** If the bottom elevation of a storage reservoir must be below normal ground surface, it shall be placed above the seasonal high ground water table. (3-30-07)

**b.** Non-potable mains and services, standing water, and similar sources of possible contamination must be kept at least fifty (50) feet from any partially buried or below-ground storage structure or facility, except that non-potable mains and services constructed of potable water class pipe are allowed as close as twenty (20) feet from a partially buried or below-ground storage structure or facility. Partially buried or below-ground storage structures or facilities shall be located a minimum of fifty (50) feet from the nearest property line. (5-8-09)

**c.** No public water supply storage tank shall be located within five hundred (500) feet of any municipal or industrial wastewater treatment plant or any land which is spray irrigated with wastewater or used for sludge disposal. (3-30-07)

**d.** The top of a partially buried storage structure shall not be less than two (2) feet above normal ground surface. (3-30-07)

**e.** Ground-level or above-ground storage structures or facilities shall be located a minimum of twenty (20) feet from the nearest property line and a minimum of twenty (20) feet from any potential source of contamination. (5-8-09)

**03. Protection from Contamination.** All finished water storage structures shall have suitable watertight roofs which exclude birds, animals, insects, and excessive dust. The installation of appurtenances, such as antennas, shall be done in a manner that ensures no damage to the tank, coatings or water quality, or corrects any damage that occurred. (3-30-07)

**04. Protection from Trespassers.** Fencing, locks on access manholes, and other necessary precautions shall be provided to prevent trespassing, vandalism, and sabotage. (3-30-07)

**05. Drains.** No drain on a water storage structure may have a direct connection to a sewer or storm drain. The design shall allow draining the storage facility for cleaning or maintenance without causing loss of pressure in the distribution system. (3-30-07)

**06. Overflow.** Overflow pipes of any storage structure or facility shall discharge to daylight in a way that will preclude the possibility of backflow to the reservoir and, where practical, be provided with an expanded metal screen installed within the pipe that will exclude rodents and deter vandalism. The overflow pipe shall be of sufficient diameter to permit waste of water in excess of the filling rate. The overflow shall discharge over a drainage inlet structure or a splash plate and, when practical, discharge at an elevation between twelve (12) and twenty-four (24) inches above the receiving surface. (5-8-09)

**a.** When an internal overflow pipe is used on above-ground tanks, it shall be located in the access tube. (5-8-09)

**b.** The overflow for ground-level, partially buried, or below-ground storage structures or facilities shall have a vertical section of pipe at least two (2) pipe diameters in length and either: (5-8-09)

**i.** Be screened with a twenty-four (24) mesh non-corrodible screen installed within the pipe when practical or an expanded metal screen installed within the pipe plus a weighted flapper valve or check; or (5-8-09)

**ii.** Be an equivalent system acceptable to the Department. (5-8-09)

**07. Access.** Finished water storage structures shall be designed with reasonably convenient access to the interior for cleaning and maintenance. At least two (2) manholes shall be

provided above the waterline at each water compartment where space permits, as determined by the Department. One (1) manhole may be allowed on smaller tanks on a case-by-case basis.

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

**a.** The following access requirements apply to above-ground and ground-level storage structures. Each access manhole shall be framed a minimum of four (4) inches above the surface of the roof at the opening. The actual height above the surface of the roof must be sufficient to prevent incidental contamination from snow accumulation, storm water runoff or accumulation, irrigation water, or other potential sources of contamination. (5-8-09)

**b.** The following access requirements apply to, partially buried or below-ground storage structures. Each access manhole shall be elevated a minimum of twenty-four (24) inches above the surface of the roof or the ground level, whichever is higher. The actual height above the surface of the roof or the ground level must be sufficient to prevent incidental contamination from snow accumulation, storm water runoff or accumulation, irrigation water, or other potential sources of contamination. (5-8-09)

**c.** Each manhole shall be fitted with a solid water tight cover which overlaps a framed opening and extends down around the frame at least two (2) inches or otherwise prevents the entrance of contaminants. The frame ~~shall~~ should be at least four (4) inches high. Each cover shall be hinged on one side, and shall have a locking device. ~~(3-30-07)~~( )

**08. Vents.** Finished water storage structures shall be vented. The overflow pipe shall not be considered a vent. Open construction between the sidewall and roof is not permissible. Vents shall: (3-30-07)

**a.** Prevent the entrance of surface water and rainwater and extend twelve (12) inches above the roof. (3-30-07)

**b.** Exclude birds and animals. (3-30-07)

**c.** Exclude insects and dust, as much as this function can be made compatible with effective venting. (3-30-07)

**d.** On ground-level, partially buried, or below-ground structures, open downward with the opening at least twenty-four (24) inches above the roof or the ground level and covered with twenty-four (24) mesh non-corrodible screen. The screen shall be installed within the pipe at a location least susceptible to vandalism. (5-8-09)

**e.** On above-ground tanks and standpipes, open downward, and be fitted with twenty-four (24) mesh or similar non-corrodible screen. ~~(5-8-09)~~( )

**09. Roof and Sidewall.** The roof and sidewalls of all water storage structures must be watertight with no openings except properly constructed vents, manholes, overflows, risers, drains, pump mountings, control ports, or piping for inflow and outflow. Particular attention shall be given to the sealing of roof structures which are not integral to the tank body. (3-30-07)

**a.** Any pipes running through the roof or sidewall of a metal storage structure must



be welded, or properly gasketed. In concrete tanks, these pipes shall be connected to standard wall castings which were poured in place during the forming of the concrete. (3-30-07)

**b.** Openings in the roof of a storage structure designed to accommodate control apparatus or pump columns shall be curbed and sleeved with proper additional shielding to prevent contamination from surface or floor drainage. (3-30-07)

**c.** The roof of the storage structure shall be sloped to facilitate drainage. Downspout pipes shall not enter or pass through the reservoir. Parapets, or similar construction which would tend to hold water and snow on the roof, will not be approved unless adequate waterproofing and drainage are provided. (3-30-07)

**d.** Reservoirs with pre-cast concrete roof structures must be made watertight with the use of a waterproof membrane or similar product. (3-30-07)

**10. Construction Materials.** Materials used in storage facility construction shall meet the requirements for water contact surfaces set forth in Subsection 501.01. Porous materials such as wood or concrete block are not acceptable for use in storage construction. (3-30-07)

**11. Protection from Freezing.** Finished water storage structures and their appurtenances, especially the riser pipes, overflows, and vents, shall be designed to prevent freezing which will interfere with proper functioning. (3-30-07)

**12. Internal Catwalk.** Every catwalk over finished water in a storage structure shall have a solid floor with sealed raised edges, designed to prevent contamination from shoe scrapings and dirt. (3-30-07)

**13. Silt Stops.** Removable silt stops shall be provided to prevent sediment from entering the reservoir discharge pipe. (3-30-07)

**14. Grading.** The area surrounding a ground-level, partially buried, or below-ground structures shall be graded in a manner that will prevent surface water from standing within fifty (50) feet of it. (5-8-09)

**15. Coatings and Cathodic Protection.** Proper protection shall be given to metal surfaces by paints or other protective coatings, by cathodic protective devices, or by both. (3-30-07)

**16. Disinfection.** Storage facilities shall be disinfected in accordance with AWWA Standard C652, incorporated by reference into these rules at Subsection 002.01. Two (2) or more successive sets of samples, taken at twenty-four (24) hour intervals, shall indicate microbiologically satisfactory water before the facility is placed into operation. (3-30-07)

**17. Abandonment.** All unused subsurface storage tanks shall be removed and backfilled, or abandoned by extracting residual fluids and filling the structure with sand or fine gravel. (3-30-07)

**545. FACILITY AND DESIGN STANDARDS: TREATMENT PLANT STORAGE FACILITIES.**

The design standards of Section 544 shall apply to treatment plant storage. (3-30-07)

**01. Filter Wash Water.** Filter wash water tanks shall be sized, in conjunction with available pump units and finished water storage, to provide the backwash water required by Section 521. Consideration must be given to the backwashing of several filters in rapid succession. (3-30-07)

**02. Clearwell.** When finished water storage is used to provide disinfectant contact time special attention must be given to tank size and baffling. An overflow and vent shall be provided. A minimum of two (2) clearwell compartments shall be provided to allow for cleaning or maintenance. Clearwells constructed under filters may be exempt from the requirements set out in Subsection 544.02.d. when the design provides adequate protection from contamination. (3-30-07)( )

**03. Adjacent Storage.** Finished or treated water must not be stored or conveyed in a compartment adjacent to untreated or partially treated water when the two (2) compartments are separated by a single wall, unless approved by the reviewing authority. (3-30-07)

**04. Other Treatment Plant Storage Tanks.** Unless otherwise allowed by the reviewing authority, other treatment plant storage tanks/basins such as detention basins, backwash reclaim tanks, receiving basins, and pump wet-wells for finished water shall be designed as finished water storage structures. In addition, these tanks/basins shall be designed to allow for cleaning or maintenance through temporary tanks, standby pumping capabilities, or other means approved by the Department. (3-30-07)( )

**546. FACILITY AND DESIGN STANDARDS: DISTRIBUTION SYSTEM STORAGE FACILITIES.**

**01. Design.** The applicable design standards of Section 544 shall be followed for distribution system storage. (3-30-07)

**02. Isolation.** Finished water storage structures which provide pressure directly to the distribution system shall be designed so they can be isolated from the distribution system and drained for cleaning or maintenance without causing a loss of pressure in the distribution system. This requirement may be met through available temporary tanks, redundant pumping capabilities, or other temporary means approved by the Department. If the finished water storage structure provides fire flow for the water system, the water system owner shall provide the local fire authority advance notification of cleaning or maintenance events which isolate the structure from the distribution system and reduce available fire flow to less than the minimum required by the local fire authority. (5-8-09)( )

**03. Drain.** Drains shall discharge to daylight in a way that will preclude the possibility of backflow to the reservoir and, where practical, be provided with an expanded metal screen installed within the pipe that will exclude rodents and deter vandalism. The drain shall, when practical, discharge at an elevation between twelve (12) and twenty-four (24) inches above the receiving surface, and discharge over a drainage inlet structure or a splash plate. (5-8-09)

**04. Level Controls.** Adequate controls shall be provided to maintain levels in distribution system storage structures. Level indicating devices shall be provided at a central location. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**548. FACILITY AND DESIGN STANDARDS: DISINFECTION OF FACILITIES PRIOR TO USE.**

Any supplier of water for a public water system shall ensure that new construction or modifications to an existing system shall be flushed and disinfected in accordance with American Water Works Association (AWWA) Standards, incorporated by reference into these rules at Subsection 002.01, prior to being placed into service. Disposal of chlorinated water from disinfection activities shall be coordinated with the DEQ Regional Office. (3-30-07)( )

**549. -- 551. (RESERVED).**

**552. FACILITY AND DESIGN STANDARDS: OPERATING CRITERIA FOR PUBLIC WATER SYSTEMS.**

**01. Quantity and Pressure Requirements.** Design requirements regarding pressure analysis are found in Section 542.13. (5-8-09)

**a. Minimum Capacity.** The capacity of a public drinking water system shall be at least eight hundred (800) gallons per day per residence. (5-8-09)

**i.** The minimum capacity of eight hundred (800) gallons per day shall be the design maximum day demand rate exclusive of irrigation and fire flow requirements. (5-8-09)

**ii.** The minimum capacity of eight hundred (800) gallons per day is only acceptable if the public drinking water system has equalization storage of finished water in sufficient quantity to compensate for the difference between a water system's maximum pumping capacity and peak hour demand. (5-8-09)

**iii.** The design capacity of a public drinking water system for material modifications may be less than eight hundred (800) gallons per day per residence if the water system owner provides information that demonstrates to the Department's satisfaction the maximum day demand for the system, exclusive of irrigation and fire flows, is less than eight hundred (800) gallons per day per residence. (5-8-09)

**b. Pressure.** ~~If the Department receives a complaint from a customer or customers of a public drinking water system regarding inadequate or excessive pressure, the Department may, after initial investigation by the water system or the Department, require the public water system to conduct a local pressure monitoring study to diagnose and correct pressure problems.~~ All public water systems shall meet the following requirements: (3-30-07)( )

i. Any public water system shall be capable of providing sufficient water during maximum day demand conditions, including fire flow where provided, to maintain a minimum pressure of twenty (20) psi throughout the distribution system, at ground level, as measured at the service connection or along the property line adjacent to the consumer's premises.

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

ii. When pressures within the system are known to have fallen below twenty (20) psi, the water system must provide public notice and disinfect the system. ( )

iii. If an initial investigation by the water system fails to discover the causes of inadequate or excessive pressure, the Department may require a public drinking water system to conduct a local pressure monitoring study to diagnose and correct pressure problems. Compliance with these requirements by water systems that do not have a meter vault or other point of access at the service connection or along the property line adjacent to the consumer's premises where pressure in the distribution system can be reliably measured shall be determined by measurements within the consumer's premises, or at another representative location acceptable to the Department. ( )

iv. Copies of pressure monitoring study reports required under Subsection 552.01.b.iii. detailing study results and any resulting corrective actions planned or performed by the public water system shall be submitted to the Department in accordance with these rules. ( )

~~v.~~ The following public water systems or service areas of public water systems shall maintain a minimum pressure of forty (40) psi throughout the distribution system, during peak hour demand conditions, excluding fire flow, measured at the service connection or along the property line adjacent to the consumer's premises. (5-8-09)

(1) Any public water system constructed or substantially modified after July 1, 1985. (5-8-09)

(2) Any new service areas. (5-8-09)

(3) Any public water system that is undergoing material modification where it is feasible to meet the pressure requirements as part of the material modification. (5-8-09)

~~vi.~~ Any public water system shall keep static pressure within the distribution system below one hundred (100) psi and should ordinarily keep static pressure below eighty (80) psi. Pressures above one hundred (100) psi shall be controlled by pressure reducing devices installed in the distribution main. The Department may approve the use of pressure reducing devices at individual service connections on a case by case basis, if it can be demonstrated that higher pressures in portions of the distribution system are required for efficient system operation. If system modification will cause pressure to routinely exceed eighty (80) psi, or if a check valve or an individual pressure reducing device is added to the service line, the water system owner shall notify affected customers. Notification may include reasons for the elevated pressure, problems or damage that elevated pressure can inflict on appliances or plumbing systems, and suggested procedures or mitigation efforts affected property owners may initiate to minimize problems or

damage.

~~(5-8-09)~~( )

~~vii.~~ The Department may allow the installation of booster pump systems at individual service connections on a case by case basis. However, such an installation may only occur with the full knowledge and agreement of the public water system, including assurance by the water system that the individual booster pump will cause no adverse effects on system operation.

(4-11-06)

~~v.~~ *When pressures within the system are known to have fallen below twenty (20) psi, the water system must provide public notice and disinfect the system.*

~~(5-3-03)~~

~~vi.~~ *Compliance with these requirements by water systems that do not have a meter vault or other point of access at the service connection or along the property line adjacent to the consumer's premises where pressure in the distribution system can be reliably measured shall be determined by measurements within the consumer's premises, or at another representative location acceptable to the Department.*

~~(5-8-09)~~

**c.** Fire Flows. Any public water system designed to provide fire flows shall ensure that such flows are compatible with the water demand of existing and planned fire fighting equipment and fire fighting practices in the area served by the system.

(5-3-03)

**d.** Irrigation Flows.

(12-1-92)

i. Any public water system constructed after November 1, 1977, shall be capable of providing water for uncontrolled, simultaneous foreseeable irrigation demand, which shall include all acreage that the system is designed to irrigate.

(5-3-03)

(1) The Department must concur with assumptions regarding the acreage to be irrigated. In general, an assumption that no outside watering will occur is considered unsound and is unlikely to be approved.

(5-3-03)

(2) An assumption of minimal outside watering, as in recreational subdivisions, may be acceptable if design flows are adequate for maintenance of "green zones" for protection against wildland fire.

(5-3-03)

ii. The requirement of Subsection 552.01.d.i. may be modified by the Department if:

(5-3-03)

(1) A separate irrigation system is provided; or

(12-10-92)

(2) The supplier of water can regulate the rate of irrigation through its police powers, and the water system is designed to accommodate a regulated rate of irrigation flow. The Department may require the water system to submit a legal opinion addressing the enforceability of such police powers.

(5-3-03)

iii. If a separate non-potable irrigation system is provided for the consumers, all mains, hydrants and appurtenances shall be easily identified as non-potable. The Department must concur with a plan to ensure that each new potable water service is not cross-connected with

the irrigation system. (5-3-03)

**02. Ground Water.** (12-10-92)

**a.** Public water systems constructed after July 1, 1985, and supplied by ground water, shall treat water within the system by disinfection if the ground water source is not protected from contamination. (12-10-92)

**b.** The Department may, in its discretion, require disinfection for any existing public water system supplied by ground water if the system consistently exceeds the MCL for coliform, and if the system does not appear adequately protected from contamination. Adequate protection will be determined based upon at least the following factors: (12-10-92)

i. Location of possible sources of contamination; (12-10-92)

ii. Size of the well lot; (12-10-92)

iii. Depth of the source of water; (12-10-92)

iv. Bacteriological quality of the aquifer; (12-10-92)

v. Geological characteristics of the area; and (12-10-92)

vi. Adequacy of development of the source. (12-10-92)

**03. Operating Criteria.** The operating criteria for systems supplied by surface water or ground water under the direct influence of surface water shall be as follows: (12-10-92)

**a.** Each system must develop and follow a water treatment operations plan acceptable to the Department, by July 31, 1993, or within six (6) months of installation of filtration treatment, whichever is later. For a maximum of twelve (12) months, this may be a draft operations plan based on pilot studies or other criteria acceptable to the Department. After twelve (12) months the plan shall be finalized based on full scale operation. (12-10-92)

**b.** The purveyor shall ensure that treatment facilities are operated in accordance with good engineering practices such as those found in the Recommended Standards for Water Works, A Report of the Water Supply Committee of the Great Lakes - Upper Mississippi River Board of Public Health and Environmental Managers as set forth in Subsection 002.02.c., or other equal standard designated by the Department. (4-6-05)

**c.** New treatment facilities shall be operated in accordance with Subsection 552.03.b., and the system shall conduct monitoring specified by the Department for a trial period specified by the Department before serving water to the public in order to protect the health of consumers served by the system. (3-30-07)

**04. Chlorination.** Systems that regularly add chlorine to their water are subject to the provisions of Section 320. Systems using surface water or ground water under the direct influence of surface water, are subject to the disinfection requirements of Sections 300 and 518. (3-30-07)

**a.** Systems using only ground water that add chlorine for the purpose of disinfection, as defined in Section 003, are subject to the following requirements: (4-6-05)

i. Chlorinator capacity shall be such that the system is able to demonstrate that it is routinely achieving four (4) logs (ninety-nine point ninety-nine percent) (99.99%) inactivation of viruses. The required contact time will be specified by the Department. This condition must be attainable even when the peak hour demand coincides with anticipated maximum chlorine demands. (5-8-09)

ii. A detectable chlorine residual shall be maintained throughout the distribution system. (4-6-05)

iii. Automatic proportioning chlorinators are required where the rate of flow is not reasonably constant. (12-10-92)

iv. Analysis for free chlorine residual shall be conducted at a location at or prior to the first service connection at least daily and records of these analyses shall be kept by the supplier of water for at least one (1) year. A report of all daily chlorine residual measurements for each calendar month shall be submitted to the Department no later than the tenth day of the following month. The frequency of measuring free chlorine residuals shall be sufficient to detect variations in chlorine demand or changes in water flow. (5-8-09)

v. A separate and ventilated room for gas chlorination equipment shall be provided. (12-10-92)

vi. The Department may, in its discretion, require a treatment rate higher than that specified in Subsection 552.04.a.i. (3-30-07)

vii. When chlorine gas is used, chlorine leak detection devices and safety equipment shall be provided and equipped with both an audible alarm and a warning light. (5-8-09)

viii. The Department may require redundant chlorine pumping capabilities with automatic switchover for systems with documented source water contamination problems and that lack adequate storage to supply the system during a pump failure. (5-8-09)

**b.** Systems using only ground water that add chlorine for the purpose of maintaining a disinfectant residual in the distribution system, when the source(s) is not at risk of microbial contamination, are subject to the following requirements: (4-6-05)

i. Automatic proportioning chlorinators are required where the rate of flow is not reasonably constant. (4-6-05)

ii. Analysis for free chlorine residual shall be made at a frequency that is sufficient to detect variations in chlorine demand or changes in water flow. (4-6-05)

**c.** Systems using only ground water that add chlorine for other purposes, such as oxidation of metals or taste and odor control, when the source(s) is known to be free of microbial

contamination, must ensure that chlorine residual entering the distribution system after treatment is less than four (4.0) mg/L. The requirements in Subsection 552.04.b.ii. also apply if the system maintains a chlorine residual in the distribution system. (3-30-07)

**05. Fluoridation.** (12-1-92)

**a.** Commercial sodium fluoride, sodium silico fluoride and hydrofluosilicic acid which conform to the applicable American Water Works Association (AWWA) Standards, incorporated by reference into these rules at Subsection 002.01, are acceptable. Use of other chemicals shall be specifically approved by the Department. (3-30-07)

**b.** Fluoride compounds shall be stored in covered or unopened shipping containers. (3-30-07)

**c.** Provisions shall be made to minimize the quantity of fluoride dust. Empty bags, drums, or barrels shall be disposed of in a manner that will minimize exposure to fluoride dusts. (3-30-07)

**d.** Daily records of flow and amounts of fluoride added shall be kept. An analysis for fluoride in finished water shall be made at least weekly. Records of these analyses shall be kept by the supplier of water for five (5) years. (12-10-92)

**06. Cross Connection Control Program - Community Water Systems.** The water purveyor is responsible through its cross connection control program to take reasonable and prudent measures to protect the water system against contamination and pollution from cross connections through premises isolation, internal or in-plant isolation, fixture protection, or some combination of premises isolation, internal isolation, and fixture protection. Pursuant to Section 543, all suppliers of water for community water systems shall implement a cross connection control program to prevent the entrance to the system of materials known to be toxic or hazardous. The water purveyor is responsible to enforce the system's cross connection control program. The program will at a minimum include: ~~(5-8-09)~~( )

**a.** An inspection program to locate cross connections and determine required suitable protection. For new connections, suitable protection must be installed prior to providing water service. (5-8-09)

**b.** Required installation and operation of adequate backflow prevention assemblies. Appropriate and adequate backflow prevention assemblies ~~types~~ for various facilities, fixtures, equipment, and uses of water ~~must~~ ~~should~~ be selected from ~~either~~ the Pacific Northwest Cross Connection Control Manual, the Uniform Plumbing Code, the ~~Environmental Protection Agency's~~ AWWA Recommended Practice for Backflow Prevention and Cross Connection Control ~~Manual~~ (M14), the USC Foundation Manual of Cross Connection Control, or other sources deemed acceptable by the Department. The assemblies must meet the requirements of Section 543 and comply with local ordinances. ~~(5-8-09)~~( )

**c.** Annual inspections and testing of all installed backflow prevention assemblies by a tester licensed by a licensing authority recognized by the Department. Testing shall be done in accordance with the test procedures published by the University of Southern California



Foundation for Cross-Connection Control and Hydraulic Research. See the USC Foundation Manual of Cross-Connection Control referenced in Subsection 002.02. ~~(3-30-07)~~( )

**d.** Discontinuance of service to any structure, facility, or premises where suitable backflow protection has not been provided for a cross connection. ~~(3-30-07)~~( )

**07. Cross Connection Control Program - Non-Community Water Systems.** All suppliers of water for non-community water systems shall ensure that cross connections do not exist or are isolated from the potable water system by an approved backflow prevention assembly. Backflow prevention assemblies shall be inspected and tested annually for functionality by an Idaho licensed tester, as specified in Subsection 552.06.c. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**900. TABLES.**

**01. Table 1 -- Minimum Distances From a Public Water System Well.**

<b>Minimum Distances from a Public Water System Well</b>	
Gravity <del>sewer</del> <u>wastewater</u> line	50 feet
Any potential source of contamination	50 feet
Pressure <del>sewer</del> <u>wastewater</u> line	100 feet
<u>Class A Municipal Reclaimed Wastewater Pressure distribution line</u>	<u>50</u>
Individual home septic tank	100 feet
Individual home disposal field	100 feet
Individual home seepage pit	100 feet
Privies	100 feet
Livestock	50 feet
Drainfield - standard subsurface disposal module	100 feet
Absorption module - large soil absorption system	150 - 300 feet, see IDAPA 58.01.03
Canals, streams, ditches, lakes, ponds and tanks used to store non-potable substances	50 feet
Storm water facilities disposing storm water originating off the well lot	50 feet
Municipal or industrial wastewater treatment plant	500 feet

Minimum Distances from a Public Water System Well	
Reclamation and reuse of municipal and industrial wastewater sites	See IDAPA 58.01.17
Biosolids application site	1,000 feet

(5-8-09)( )

**02. Table 2 - Well Casing Standards for Public Water System Wells.**

STEEL PIPE					
				WEIGHT PER FOOT (pounds)	
DIAMETER (inches)			THICKNESS (inches)	Plain Ends	With Threads and Couplings
SIZE	External	Internal		(calculated)	(nominal)
6 (id) *	6.625	6.065	0.280	18.97	19.18
8	8.625	7.981	0.322	28.55	29.35
10	10.750	10.020	0.365	40.48	41.85
12	12.750	12.000	0.375	49.56	51.15
14 (od) *	14.000	13.250	0.375	54.57	57.00
16	16.000	15.250	0.375	62.58	
18	18.000	17.250	0.375	70.59	
20	20.000	19.250	0.375	78.60	
22	22.000	21.000	0.500	114.81	
24	24.000	23.000	0.500	125.49	
26	26.000	25.000	0.500	136.17	
28	28.000	27.000	0.500	146.85	
30	30.000	29.000	0.500	157.53	
32	32.000	31.000	0.500	168.21	
34	34.000	33.000	0.500	178.89	
36	36.000	35.000	0.500	189.57	

\* id = inside diameter  
od = outside diameter

(3-30-07)