

PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Health & Welfare Committee
64th Idaho Legislature
First Regular Session -- 2017



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2017

SENATE HEALTH & WELFARE COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code.

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

Changes to these rules align this chapter with those approved by the 2016 Legislature. References and classification of individuals required to have the Department's criminal history and background checks were added as temporary rules effective on July 1, 2016.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 6, 2016, Idaho Administrative Bulletin, **Vol. 16-7, pages 62 through 65.**

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 56-1004A, Idaho Code.

The fee amount for a Department fingerprint-based criminal history and background check is \$65.00 based on the actual cost. The individuals that are required to have these checks are responsible for the cost.

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 are no additional costs to be paid for by the Department or the state general fund due to this rulemaking. It is anticipated that the individuals being checked are in the same types of classifications that currently are being checked, and the fiscal impact will be cost-neutral.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Fernando Castro at (208) 332-7999.

DATED this 17th day of November, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2016.

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(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), 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 20, 2016.

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 align this chapter with rules approved by the 2016 Legislature. Changes to these rules add references and amend classification of individuals required to have the Department's criminal history and background checks. The Division of Behavioral Health, added a new chapter, renamed a classification, and deleted a chapter of rules that are referenced in these rules. The Division of Public Health added a new chapter and deleted another chapter of rules referenced in these rules. These rules are temporary to update reference for the changes that become effective on July 1, 2016.

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

The 2016 Legislature approved Department rules that amended classifications of individuals required to have a Department criminal history and background check. The final rules become effective July 1, 2016, which require this chapter of rules to be updated to reflect those changes effective on that date.

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

The fee amount for a Department fingerprint-based criminal history and background check is \$65.00 based on the actual cost. The individuals that are required to have these checks are responsible for the cost.

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 are no additional costs to be paid for by the Department or the state general fund due to this rulemaking. It is anticipated that the individuals being checked are in the same types of classifications that currently are being checked, and the fiscal impact will be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because the Department found it was not feasible to hold negotiated rule meetings in order to have temporary rules in place by July 1, 2016.

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 Fernando Castro, at (208) 332-7999.

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 27, 2016.

DATED this 2nd Day of June, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 16-0506-1601

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 Department rules to complete a criminal history and background check. (3-4-11)

01. Adoptive Parent Applicants. Individuals who must comply with IDAPA 16.06.01, "Child and Family Services," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

~~**02. Alcohol or Substance Use Disorders Treatment Facilities and Programs.** Individuals who must comply with IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs," and IDAPA 16.07.17, "Substance Use Disorders Services." (4-6-15)~~

~~**03. Behavioral Health Community Crisis Centers.** Individuals who must comply with IDAPA 16.07.30, "Behavioral Health Community Crisis Centers." (4-6-15)~~

03. Behavioral Health Programs. Individuals who must comply with IDAPA 16.07.15, "Behavioral Health Programs." ()

04. Certified Family Homes. Individuals who must comply with Section 39-3520, Idaho Code, IDAPA 16.03.19, "Rules Governing Certified Family Homes," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

05. Children's Residential Care Facilities. Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

06. Children's Therapeutic Outdoor Programs. Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

07. Contracted Non-Emergency Medical Transportation Providers. Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-4-11)

08. Court Appointed Guardians and Conservators. Individuals who must comply with the requirements of Title 15, Chapter 5, Idaho Code, and Title 66, Chapter 4, Idaho Code. Court required guardian and conservator criminal history and background checks are not provided Department clearances described in Section 180.01 of these rules. (3-20-14)

09. Designated Examiners and Designated Dispositioners. Individuals who must comply with IDAPA 16.07.39, "Appointment of Designated Examiners and Designated Dispositioners." (3-4-11)

10. **Developmental Disabilities Agencies.** Individuals who must comply with IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA),” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
11. **Emergency Medical Services (EMS).** Individuals who must comply with IDAPA 16.021.035, ~~“Rules Governing Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements,”~~ and IDAPA 16.01.07, “Emergency Medical Services (EMS) -- Personnel Licensing Requirements.” ~~(7-1-12)~~()
12. **High Risk Providers of Medicaid.** Individuals who must comply with IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” and the Medicaid Provider Handbook. (4-6-15)
13. **Home and Community-Based Services (HCBS).** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” and IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies.” (7-1-12)
14. **Home Health Agencies.** Individuals who must comply with IDAPA 16.03.07, “Home Health Agencies.” (3-4-11)
15. **Idaho Behavioral Health Plan (IBHP).** Individuals who are contractors, contractor’s employees, and subcontractors in accordance with IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (4-6-15)
16. **Idaho Child Care Program (ICCP).** Individuals who must comply with IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program.” (3-4-11)
17. **Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).** Individuals who must comply with IDAPA 16.03.11, “Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).” (3-4-11)
18. **Licensed Foster Care.** Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)
19. **Licensed Day Care.** 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.” (3-4-11)
20. **Mental Health Services.** Individuals who must comply with IDAPA 16.07.33, “Adult Mental Health Services,” and IDAPA 16.07.37, “Children’s Mental Health Services.” (4-6-15)
21. **Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.** Individuals who must comply with IDAPA 16.07.50, “Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.” (3-4-11)
22. **Personal Assistance Agencies.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
23. **Personal Care Service Providers.** Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
24. **Residential Care or Assisted Living Facilities in Idaho.** Individuals who must comply with IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” (3-4-11)
25. **Service Coordinators and Paraprofessional Providers.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
26. **Skilled Nursing and Intermediate Care Facilities.** Individuals who must comply with IDAPA 16.03.02, “Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities.” (3-4-11)
27. **Support Brokers and Community Support Workers.** Individuals who must comply with IDAPA 16.03.13, “Consumer-Directed Services.” (3-4-11)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1602

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected. Pursuant to Section 67-5224(5)(b), Idaho Code, as provided herein the pending fee rule becomes final and effective on July 1, 2017.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code.

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

Changes are being made to the pending fee rule based on comments received and for clarification. Additional classes of individuals have been added to those being required to provide previous addresses in order to receive an enhanced clearance. Fees charged by other states to check child protection registries in those jurisdictions may increase the cost of the background check for individuals working with children and vulnerable adults.

The text of the pending fee 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 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 100 through 112](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 56-1004A, Idaho Code.

Through the rule negotiation process, it was determined that instead of increasing the background check fee for all applicants, it would be better to only increase the fees for the background checks of the applicants that are required to have additional records searched in other states where an individual has resided in the previous five years. The cost will stay the same as it is currently for most providers, unless they choose to work with children. Those individuals' fee will increase by the amount charged by other states to check each state's registries.

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 expected cost of the implementation of this rule change is \$85,150 for the computer system upgrade. This expense will be covered with the Department's existing SFY 2017 budget appropriation. Once the rule changes are implemented, there will be no further fiscal impact to the state general fund or to dedicated funds. This rulemaking is intended to be cost-neutral because the applicant is responsible for the costs unless otherwise provided by Department rule, as stated in Section 56-1004A(7), Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending fee rule, contact Fernando Castro at (208) 332-7999.

DATED this 17th day of November, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE WAS 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(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code.

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

Wednesday September, 7, 2016 1:00 pm (Local)	Thursday September 8, 2016 1:00 pm (Local)	Monday September 12, 2016 1:00 pm (Local)
Region 1 - Coeur d'Alene 1120 Ironwood Dr., Con. Rm. 118 Coeur d'Alene, ID	Lewiston Community Center 1424 Main Street Lewiston, ID	Region 3 - DHW Offices 3402 Franklin Rd Caldwell, ID
Tuesday September, 13, 2016 1:00 pm (Local)	Wednesday September 14, 2016 1:00 pm (Local)	Monday September 19, 2016 1:00 pm (Local)
Region 4 - DHW Offices 1720 N. Westgate Dr. Boise, ID	Region 5 - DHW Offices 601 Pole Line Road Twin Falls, ID	Region 7 - DHW Offices 150 Shoup Avenue Idaho Falls, ID
Tuesday September 20, 2016 1:00 pm (Local)		
Region 6 - DHW Offices 1070 Hilina Pocatello, ID		

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 Department is updating the Criminal History and Background Check (CHC) rules to better protect vulnerable adults and children. The Department is amending the list of disqualifying crimes for unconditional denials to include crimes that have been added to Idaho Code and crimes required for child protection by federal programs. The CHC rules need to align with the Idaho Child Care Program's (ICCP) grant and federal regulation requirements related to criminal history checks by September 2017. ICCP providers are required to have relevant records searched in other states where they have lived in the previous five years, as well as having the background checks renewed.

Because of the fee charged by other states to check protection registries, the cost of the background check for individuals working with children may increase because Idaho law requires that the fees cover the cost of the background check.

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

Through the rule negotiation process, it was determined that instead of increasing the background check fee for all applicants, it would be better to only increase the fees for the background checks of the applicants that are required to have additional records searched in other states where an individual has resided in the previous five years. The cost will stay the same as it is currently for most providers, unless they choose to work with children. Those individuals fee will increase by the amount charged by other states to check each states registries.

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:

The expected cost of the implementation of this rule change is \$85,150.00 for computer system upgrade. This expense will be covered with the Department's existing SFY 2017 budget appropriation. Once the rule changes are implemented, there will be no further fiscal impact to the State General Fund or to dedicated funds. This rulemaking is intended to be cost-neutral because the applicant is responsible for the costs unless otherwise provided by Department rule, as stated §56-1004A(7), Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016, Idaho Administrative Bulletin, **Vol. 16-6, pages 41 & 42.**

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 Fernando Castro, at (208) 332-7999.

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 28, 2016.

DATED this 5th Day of August, 2016.

LSO Rules Analysis Memo

Italicized red text that is double underscored is new text that has been added to the pending fee rule.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 16-0506-1602

000. LEGAL AUTHORITY.

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code. Under 42 USC Section 9858f, the Department is required to check certain records for federal child care programs. ~~(4-6-15)~~()

001. TITLE, SCOPE AND POLICY.

01. Title. The title of this chapter is IDAPA 16.05.06, “Criminal History and Background Checks.” (3-26-08)

02. Scope. These rules assist the Department in the protection of children and vulnerable adults by providing requirements to conduct criminal history and background checks of individuals licensed or certified by the Department, or who provide care or services to children or vulnerable adults ~~or children~~. Individuals requiring a criminal history check are identified in Department rules. ~~(3-26-08)~~()

03. Policy. It is the Department’s policy to conduct fingerprint-based criminal history and background checks on individuals who have completed a criminal history application. The criminal history applicant is required to disclose any pertinent information of regarding crimes or offenses findings that would disqualify the individual from providing care or services to children or vulnerable populations adults. The Department may obtains information for these criminal history and background checks from the following sources: ~~(3-26-08)~~()

- a. Federal Bureau of Investigation; (3-26-08)
- b. National Crime Information Center; (3-26-08)
- c. Idaho State Police Bureau of Criminal Identification; (3-26-08)
- d. ~~Idaho~~ Any state or federal Child Protection ~~Central~~ Registry; ~~(3-26-08)~~()
- e. ~~Idaho~~ Any state or federal Adult Protection Registry; ~~(3-26-08)~~()
- f. Any state or federal Sexual Offender Registry; ~~(3-26-08)~~()
- g. Office of Inspector General List of Excluded Individuals and Entities; (3-26-08)
- h. Idaho Department of Transportation Driving Records; (3-26-08)
- i. Nurse Aide Registry; (3-26-08)
- j. Other states and jurisdictions records and findings. ~~(3-26-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of this chapter of rules, the following terms apply: (7-1-12)

01. Agency. An administrative subdivision of government or an establishment engaged in doing business for another entity. This term is synonymous with the term employer. (7-1-12)

02. 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)

03. Clearance. A clearance ~~issued~~ is a document designated by the Department ~~once the~~ as the official result of a completed criminal history and background check ~~is completed and~~ with no disqualifying crimes or relevant records ~~are~~ found. ~~(3-26-08)~~ ()

04. 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)

05. 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. (3-4-11)

06. 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)

07. 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. (3-4-11)

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

09. 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)

10. Employer. An entity that hires people to work in exchange for compensation. This term is synonymous with the term agency. (7-1-12)

11. Enhanced Clearance. An enhanced clearance is a clearance issued by the Department that includes a search of child protection registries in states or jurisdictions in which an applicant has resided during the preceding five (5) years. See Section 126 of these rules. ()

~~172.~~ **Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)

~~123.~~ **Federal Bureau of Investigation (FBI).** The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

~~134.~~ **Good Cause.** Substantial reason, one that affords a legal excuse. (3-4-11)

~~145.~~ **Idaho State Police Bureau of Criminal Identification.** The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

~~156.~~ **Relevant Record.** A relevant record is a record that is found in a search of criminal records or registries checked by the Department as provided in Section 56-1004A, Idaho Code. (7-1-12)

011. -- 049. (RESERVED)

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

The fee for a Department fingerprint-based criminal history and background check is up to seventy dollars (\$70) for an individual. The applicant is responsible for the cost of the criminal history and background check except where otherwise provided by Department rules. An applicant is responsible for any additional costs incurred by the Department paid to agencies, judicial, or law enforcement jurisdictions in other states. The Department will collect the additional funds to cover its costs. (~~3-27-13~~)()

(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. Maintain Printed Copy of Application. The employer must maintain a copy of the printed, signed, and notarized criminal history and background check application for all individuals required to obtain a criminal history and background check. This copy must be readily available for inspection to verify compliance with this requirement. An employer who chooses to use a criminal history and background check obtained for a previous employer must comply with Section 300 of these rules and maintain copies of the records. ()

023. 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)

034. 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. (3-4-11)

(BREAK IN CONTINUITY OF SECTIONS)

120. APPLICATION FOR A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals who are subject to a criminal history and background check must complete an application and have it notarized. The application must include disclosure of any disqualifying crimes, offenses, or relevant records. (3-26-08)

01. Application Form. The applicant must request a criminal history and background check by completing the Department's application form and submitting it on-line or by mail. The individual's application authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The following information is required to complete the application: (3-26-08)

- a. Name, current and former names, or aliases; (3-26-08)
- b. Current and former addresses as requested in the application; ~~(3-26-08)~~ ()
- c. Date of birth, that appears on a valid identification document issued by a governmental entity; (3-26-08)
- d. State and country of birth; and (3-26-08)
- e. Driver's license number, if licensed, state where licensed, and whether a license has ever been revoked or suspended. (3-26-08)
- f. Other identifying information, including gender, race, height, weight, eye color, and hair color; (3-26-08)
- g. Employer information; (3-26-08)
- h. Any criminal record or criminal offense information; (3-26-08)
- i. Any pending charges or outstanding warrants; (3-26-08)
- j. Any child or adult protection involvement; (3-26-08)
- k. Any Medicare or Medicaid Provider Exclusion; and (3-26-08)
- l. Any other information requested on the application. (3-26-08)

02. Disclosures. The individual must disclose any conviction, pending charges or indictment for crimes, and furnish a description of the crime and the particulars on the application. The individual must also disclose any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint, and any other information as required. (3-26-08)

03. Failure to Disclose Information. ()

a. An applicant who falsifies or fails to disclose information on the application, may be subject to a conditional denial under Section 230.01 and prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. (3-26-08)

b. An applicant required to obtain a criminal history and background check under Section 126 of these rules that knowingly makes a materially false statement in connection to his background check will receive an unconditional denial as provided in Section 200 of these rules. ()

121. -- 124. (RESERVED)

125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.

~~Under the provisions in 42 USC 16961 Section 152, a check of the Idaho Child Protection Central Registry may be requested by another state for foster or adoptive placement cases~~ The Department will provide the results of a check of the Idaho Child Protection Central Registry to any agency that requires it to comply with the provisions of applicable federal or state law. The Department will process those requests as described in this rule. (4-7-11)()

01. Request for an Idaho Child Protection Central Registry Check. A request for an Idaho Child Protection Central Registry check must be submitted by mail, facsimile transmission, or e-mail attachment on state or agency letterhead with the requesting authority contact information, and must include the following: (4-7-11)()

- a. Name of the subject of the check, and any aliases; (4-7-11)
- b. Date of birth and Social Security Number of the subject of the check; and (4-7-11)
- c. A notarized signature of the subject of the check authorizing the request. (4-7-11)

02. Fee Amount. The fee for an Idaho Child Protection Central Registry check is twenty dollars (\$20) for each subject checked. (4-7-11)

03. Department Response. A response will be returned to the state agency initiating the request for the check within fourteen (14) days of receipt of the request. The Department's contact information will be included along with the result of the check. (4-7-11)()

126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a criminal history and background check. ()

- 01. Adoptive Parent Applicants.** Described in Subsection 100.01 of these rules. ()
- 02. Behavioral Health Community Crisis Centers.** Described in Subsection 100.02 of these rules. ()
- 03. Behavioral Health Programs.** Described in Subsection 100.03 of these rules. ()
- 04. Children's Residential Care Facilities.** Described in Subsection 100.05 of these rules. ()
- 05. Children's Therapeutic Outdoor Programs.** Described in Subsection 100.06 of these rules. ()
- 06. Emergency Medical Services (EMS).** Described in Subsection 100.11 of these rules. ()
- 07. Idaho Child Care Program (ICCP).** Described in Subsection 100.16 of these rules. ()
- 08. Licensed Foster Care.** Described in Subsection 100.18 of these rules. ()
- 09. Licensed Day Care.** Described in Subsection 100.19 of these rules. ()
- 10. Mental Health Services.** Described in Subsection 100.20 of these rules. ()
- 11. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.** Described in Subsection 100.21 of these rules. ()

1267. -- 129. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department obtains fingerprints electronically at each of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (7-1-14)

01. Department Fingerprinting Locations. A fingerprint appointment is scheduled at designated Department locations where the Department will collect the individual's fingerprints. Locations for the closest Department fingerprint collection office where an individual may submit fingerprints are listed on the Department's website, ~~or you~~. **The applicant** may contact the Criminal History Unit as described in Section 005 of these rules **for additional guidance.** ~~(4-6-15)~~ ()

02. Submitting Fingerprints by Mail. When an individual elects to have fingerprints collected by a local law enforcement agency or by the applicant's employer, the Department's fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the completed notarized application and applicable fee to the address indicated on the Department's website. The notarized application and fees must be received by the Department in the time frame required in Section 150 of these rules. (7-1-14)

03. Submission of Reprints. In the event that an individual's submitted fingerprints are deemed unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. (7-1-14)

(BREAK IN CONTINUITY OF SECTIONS)

180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.

The Department will issue a clearance or denial once the criminal history and background check is completed. ()

01. ~~Department Clearance~~ Results of Criminal History and Background Checks. The results may be accessed by the individual on the Department's website. The employer may access the information that is provided by the applicant and information obtained from the state, county, or through registries. ~~(3-20-14)~~ ()

02. Findings for Court Required Criminal History and Background Checks. As required in Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court ordered criminal history and background check to individuals appointed by the court according to Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.

01. ~~Department~~ Clearance. A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual may print copies of the clearance.

The employer must print the clearance within fourteen (14) calendar days of the clearance being accessible on the Department's website, and maintain a copy readily available for inspection for a period consistent with the employer's own personnel documentation retention schedule. (7-6-15)()

02. Clearance Types. An applicant required to pass a criminal history and background must receive a clearance as provided below: ()

a. A clearance for an applicant who is not seeking an enhanced clearance for employment in classes listed in Section 126 of these rules, may receive a clearance for a criminal history and background check when a relevant record identified on any child protection registry is disclosed, but the applicant has no conviction of any crimes listed in Subsections 210.01 or 210.02 of these rules. ()

b. An applicant who receives an enhanced clearance has met the criteria to have obtained a clearance as provided in Subsection 190.02.a. of this rule. An enhanced clearance is required for each of the classes listed in Section 126 of these rules and requires searches from states and jurisdictions where the applicant has resided in the previous five (5) years. A relevant record on any child protection registry will result in a denial under Subsection 200.01 of these rules and no clearance will be issued. An applicant who applies to work in any of these classes must receive or have an enhanced clearance. ()

023. Revocation of Department Clearance. An individual's previously issued clearance may be revoked for the following: (7-1-14)()

a. The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. (7-1-14)

b. The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. (7-1-14)

c. The criminal history and background check fees are not paid, or are insufficient to cover the costs of the background check. ()

191. -- 199. (RESERVED)

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. Unconditional denials are issued for: (3-4-11)

a. Disqualifying crimes described in Section 210 of these rules; (3-4-11)

b. A relevant record or finding on the Idaho any Child Abuse Central Protection Registry with a Level 1 or Level 2 finding; for the classes of individuals listed in Section 126 of these rules: (7-1-12)()

c. A relevant record on the Nurse Aide Registry; (7-1-14)

d. A relevant record on either the state or federal sex offender registries; ~~or~~ (7-1-14)()

e. A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules; or (7-1-12)()

f. A materially false statement made knowingly in connection to the Department's criminal history and background check application for the classes of individuals listed in Section 126 of these rules will result in a five-year disqualification period for the applicant. ()

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 twenty-eight (28) 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 described in Section 005 of these rules. (7-1-14)

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. Appeal of an Unconditional Denial. Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of the Department. (7-1-14)

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.c.c. of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. (7-1-12)()

a. Crimes against vulnerable adults: ()

i. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)

ii. Abandoning a vulnerable adult, as defined in Section 18-1505A, Idaho Code; ()

iii. Sexual abuse and exploitation of a vulnerable adult, as defined in Section 18-1505B, Idaho Code. ()

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. Hiring, employing, or using a minor to engage in certain acts, as defined in Section 18-1517A.

<u>Idaho Code:</u>	()
<u>f. Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code:</u>	()
<u>eg.</u> Incest, as defined in Section 18-6602, Idaho Code;	(3-26-08)
<u>fh.</u> Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code;	(3-26-08)
<u>gi.</u> Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code;	(3-26-08)
<u>hj.</u> Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code;	(3-26-08)
<u>ik.</u> Mayhem, as defined in Section 18-5001, Idaho Code;	(3-26-08)
<u>jl.</u> Manslaughter:	(7-1-12)
i. Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code;	(7-1-12)
ii. Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code;	(7-1-12)
iii. Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code;	(7-1-12)
<u>km.</u> Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code;	(7-1-12)
<u>ln.</u> Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code;	(3-26-08)
<u>m.</u> Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code;	(3-26-08)
<u>no.</u> Rape, as defined in Section 18-6101, Idaho Code;	(3-26-08)
<u>op.</u> Robbery, as defined in Section 18-6501, Idaho Code;	(3-26-08)
<u>pq.</u> Felony stalking, as defined in Section 18-7905, Idaho Code;	(3-26-08)
<u>qr.</u> Sale or barter of a child, as defined in Section 18-1511, Idaho Code;	(3-26-08)
<u>s.</u> <u>Ritualized abuse of a child, as defined in Section 18-1506A, Idaho Code:</u>	()
<u>tf.</u> Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507 , Idaho Code;	(3-26-08) ()
<u>u.</u> <u>Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code:</u>	()
<u>v.</u> <u>Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code:</u>	()
<u>sw.</u> Video voyeurism, as defined in Section 18-6609, Idaho Code;	(3-26-08)
<u>fx.</u> Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code;	(3-26-08)
<u>vy.</u> 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>yz.</u> Any felony punishable by death or life imprisonment; o#	(3-26-08) ()

- aa.** Attempted strangulation, as defined in Section 18-923, Idaho Code; ()
- bb.** Felony domestic violence, as defined in Section 18-918, Idaho; or ()
- cc.** 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.jn. of this rule, or any substantially conforming foreign criminal violation: (7-1-14)()

- a.** Any felony not described in Subsection 210.01, of this rule; (3-4-11)
 - b.** Misdemeanor domestic violence, as defined in Section 18-918, Idaho Code; ()
 - c.** Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; ()
 - bd.** Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-4-11)
 - ee.** Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)
 - ff.** Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)
 - eg.** Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)
 - fh.** ~~Misdemeanor p~~Public assistance fraud, as defined in Sections 56-227 ~~and~~ 56-227A, ~~56-227D, 56-227E and 56-227F,~~ Idaho Code; (7-1-12)()
 - i.** Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; ()
 - gj.** Stalking in the second degree, as defined in Section 18-7906, Idaho Code; (7-1-12)
 - hk.** Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; (7-1-14)
 - il.** Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; ~~or~~ (7-1-14)()
 - m.** Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; ()
- or
- jn.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-29-10)

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

- a.** A withheld judgment; (3-26-08)
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)

- c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d. A sealed record. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.

The employer is responsible for confirming that the applicant has completed a criminal history and background check as provided in Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same employer eliminates the requirement for a new background check. The provisions stipulated on Subsections 300.03 and 300.04 of this rule still apply. (7-1-12)

01. New Criminal History and Background Check. Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: (3-26-08)

- a. Accepting employment with a new employer; or (3-26-08)
- b. Applying for licensure or certification with the Department; and (3-26-08)
- c. His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. (3-26-08)

02. Use of Criminal History Check Within Three Years of Completion. Any employer may use a Department criminal history and background check clearance obtained under these rules if: (3-26-08)

a. The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; (4-6-15)

b. Prior to allowing the individual to provide services, the employer must obtain access to the individual's background check results and clearance through the Department's website by having the employer's identification number added to the individual's background check results, and (4-6-15)

c. The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. (3-26-08)

i. The action must be initiated by the employer within thirty (30) calendar days of obtaining access to the individual's criminal history and background check clearance issued by the Department; and (7-1-12)

ii. The employer must be able to provide proof of this action by maintaining a copy of the records required in Subsections 300.02.a. and 300.02.c. of this rule for a period consistent with the employer's own personnel documentation retention schedule. ~~(4-6-15)~~()

d. An employer not listed in Section 126 of these rules, may use an individual's Department clearance or enhanced clearance that was obtained within three (3) years from date of employment. ()

e. An individual with a current clearance that is within three (3) years from date of employment, who applies to a new agency or employer identified in Section 126 of these rules, must submit an application for a new criminal history and background check to obtain an enhanced clearance. ()

03. Employer Discretion. ~~The new~~ Any agency or employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. ~~(3-26-08)~~()

04. Department Discretion. The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required.

(3-26-08)

IDAPA 23 – BOARD OF NURSING

23.01.01 – RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-1404, Idaho Code.

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

The pending rulemaking is being adopted in order to allow nurses to provide an e-mail address for use in notifications and communications from the Board and to permit the Board to use e-mail communication, in appropriate circumstances, for service of process in contested cases; to delete unnecessary provisions requiring renewal and payment of renewal fees for an emeritus nursing license; to update language in rules related to nurses with substance use and mental health disorders who may be eligible for a limited license and in corresponding rule regarding the Program for Recovering Nurses Advisory Committee; and, pursuant to recent statutory changes, to make minor rule changes and delete the fee regarding prescriptive authority for advanced practice nurses.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 595-603](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 54-1409 and 54-1410, Idaho Code.

This rulemaking will eliminate the current requirements in Board Rule 900 that nurses who are on emeritus status pay renewal fees. IDAPA 23.01.01.900.04 - This fee, authorized pursuant to Section 54-1410, Idaho Code, is being deleted. IDAPA 23.01.01.901.5 - This fee, authorized pursuant to Section 54-1409, Idaho Code, is being deleted.

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:

Deletion of IDAPA 23.01.01.900.04, Emeritus license biennial renewal fee, will result in an estimated loss of less than \$1,000/year. Deletion of IDAPA 23.01.01.901.5, APRN Prescriptive Authorization fee, will result in an estimated loss of less than \$5,000/year.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Sandra Evans, Executive Director, at (208) 577-2482.

DATED this 4th day of November, 2016.

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) 577-2482 / Fax: (208) 334-3262

THE FOLLOWING NOTICE WAS 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, 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 19, 2016.

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 rulemaking is needed for several reasons. First, the Board wants to provide nurses with the flexibility and convenience of providing an e-mail address for use in notifications and communications from the Board. A change to this rule will also permit the Board to implement authority granted by the IDAPA 11.04.01, "Idaho Rules of Administrative Procedure of the Attorney General," to use e-mail communication, in appropriate circumstances, for service of process in contested cases. Second, the rulemaking deletes unnecessary provisions requiring renewal and payment of renewal fees for an emeritus nursing license. Third, there is a need to update language in rules related to nurses with substance use and mental health disorders who may be eligible for a limited license, as well as corresponding provisions in the Board rule regarding the Program for Recovering Nurses Advisory Committee. Finally, recent statutory changes support related minor rule changes and deletion of the fee regarding prescriptive authority for advanced practice nurses.

The proposed rulemaking adds language to Section 008 to expressly permit broadened use of e-mail in correspondence with licensees as well as in service of certain Board documents in contested case proceedings. The rulemaking, along with statutory changes, will eliminate the current requirements in Sections 060 and 900 that nurses who are on emeritus status periodically renew those licenses and pay renewal fees. The rulemaking will replace antiquated language in Sections 132 and 133 that describe or are applicable to individuals with impairments, with more modern-usage terminology. Rules provisions regarding issuance of limited licenses and a Board advisory committee are updated and clarified. The rulemaking will delete unnecessary provisions and the required fee in Section 315 related to prescriptive authority for advanced practice nurses. Finally, the rulemaking corrects a term in Section 641.

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

This rulemaking will eliminate the current requirements in Board Rule 900 that nurses who are on emeritus status pay renewal fees. IDAPA 23.01.01.900.04 - This fee, authorized pursuant to Section 54-1410, Idaho Code, is being deleted. IDAPA 23.01.01.901.05 - This fee, authorized pursuant to Section 54-1409, Idaho Code, is being deleted.

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:

Deletion of IDAPA 23.01.01.900.04, Emeritus license biennial renewal fee, will result in an estimated loss of less than \$1,000/year. Deletion of IDAPA 23.01.01.901.5, APRN Prescriptive Authorization fee, will result in an estimated loss of less than \$5,000/year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 76](#).

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, Executive Director, at (208) 577-2482 or at sandra.evans@ibn.idaho.gov.

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 26, 2016.

DATED this 16th day of August, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 23-0101-1601

008. CHANGES IN NAME AND ADDRESS -- ADDRESS FOR NOTIFICATION PURPOSES.

01. Change of Name. Whenever a change of licensee name occurs, the Board must be immediately notified of the change. Documentation confirming the change of name must be provided to the Board on request. (3-30-01)

02. Change of Address. Whenever a change of licensee *mailing* address occurs, the Board must be immediately notified of the change. (3-30-01)()

03. Address for Notification Purposes. ()

a. The most recent mailing *or electronic* address on record with the Board will be utilized for purposes of all written communication with the licensee *including, but not limited to, notification of renewal and notices related to disciplinary actions.* (3-30-01)()

b. In a contested case proceeding, the service of process of Board documents (including notices, summonses, complaints, subpoenas and orders) will be made by (1) personal service, (2) mailing to the licensee's mailing address on record, or (3) e-mailing to the licensee's electronic address on record, if authorized. Service on an electronic address is authorized when the licensee has already appeared in the proceeding or has agreed in writing to service by e-mail. ()

(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 Notice -- Licensed Registered Nurse. A notice of renewal will be *mailed provided* to every currently licensed registered nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (4-7-11)()

02. Renewal Notice -- Licensed Practical Nurse. A notice of renewal will be *mailed provided* to every currently licensed practical nurse, at the address on record with the Board, on or before July 1 of every even-

numbered year.

(4-7-11)()

03. Renewal Notice -- Advanced Practice Registered Nurse. A notice of renewal will be ~~mailed~~ **provided** to every currently licensed advanced practice registered nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (4-7-11)()

~~**04. Renewal Notice -- Emeritus Licensure.** A notice of renewal 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 APRN 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.~~ (4-7-11)

054. Renewal Applications. Renewal applications may be obtained by contacting the Board. (4-7-11)

065. Final Date to Renew. The original 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. (4-7-11)

076. Date License Lapsed. Licenses not renewed prior to September 1 of the appropriate year will be lapsed and therefore invalid. (11-28-84)

087. Effective Period. Renewed licenses shall be effective for a two (2) year period, from September 1 of the renewal year. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

132. LIMITED LICENSES.

Limited licenses may be issued to qualified individuals in four (4) categories: post-discipline, non-practicing status, restricted status, and ~~impairment-related disability~~ **substance use and mental health disorders**. Failure to comply with the terms and conditions of a limited license will be cause for summary suspension. (3-30-07)()

01. Following Disciplinary Action. (3-30-07)

a. After evaluation of an application for licensure reinstatement, the Board may issue a limited license to a nurse whose license has been revoked. (3-15-02)

b. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. (3-15-02)

02. Non-Practicing Status. (3-15-02)

a. Individuals who are prevented from engaging in the active practice of nursing may be issued a limited license. (3-15-02)

b. The Board shall specify that the license being issued does not entitle the licensee to engage in the active practice of nursing. The non-practicing status shall be noted on the license. (3-15-02)

c. The non-practicing limitation may be removed by the Board following receipt and evaluation of evidence satisfactory to the Board confirming that the licensee's physical or mental health status no longer prevents the individual from engaging in the active practice of nursing. (3-15-02)

03. Restricted Status. (3-15-02)

a. Individuals whose disabilities restrict or inhibit their ability to provide a full range of nursing services may be issued a limited license. (3-15-02)

b. In order to determine the appropriate limitations, the Board may evaluate statements from qualified professional persons who have personal knowledge of the applicant or licensee. The Board may also evaluate job descriptions and statements from potential employers and consider input from the applicant for the limited license. (3-15-02)

c. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. The conditions may include, but are not limited to: (3-15-02)

- i. Notifying the Board of changes in employment status. (3-15-02)
- ii. Submission of regular reports by the employer or by such other entities or individuals as the Board may desire. (3-15-02)
- iii. Meeting with Board representatives. (3-15-02)
- iv. Specific parameters of practice, excluding the performance of specific nursing functions. (3-15-02)

d. The conditions of limited practice may be removed by the Board following receipt and evaluation of satisfactory evidence confirming that the health status of the licensee no longer restricts or inhibits the person's ability to provide a full range of nursing services. (3-15-02)

04. Disability Due to ~~Alcohol or Drug~~ Substance Use ~~or Emotional~~ Disorder or Mental ~~Impairment~~ Health Disorder. (3-15-02)(____)

a. Individuals ~~disabled~~ whose practice is or may be impaired due to ~~alcohol or drug~~ substance use ~~disorder~~ or to ~~emotional or~~ mental ~~impairment~~ health disorder may qualify for issuance of a limited license as an alternative to discipline. (3-15-02)(____)

b. The executive director may issue a limited license for a period not to exceed five (5) years to an individual who voluntarily surrenders his license by reason of a ~~disability relating to alcohol or drug~~ substance use ~~disorder~~ or relating to ~~emotional or~~ mental ~~impairment~~ health disorder and who: (3-15-02)(____)

i. Holds a current license to practice in Idaho as a registered nurse, advanced practice registered nurse or licensed practical nurse or is otherwise eligible and is in the process of applying for licensure; (3-30-07)(____)

ii. ~~Abused drugs or alcohol, or both, or~~ Has a demonstrated or diagnosed substance use disorder or mental ~~disability~~ health disorder such that ability to safely practice is, or may be, impaired; (3-15-02)(____)

iii. Sign a written statement admitting to all facts which may constitute grounds for disciplinary action or demonstrate impairment of the safe practice of nursing, and waiving the right to a hearing and all other rights to due process in a contested case under the Idaho Administrative Procedures Act and the Nursing Practice Act; and (3-15-02)

iv. Submit reliable evidence, satisfactory to the executive director, that he is competent to safely practice nursing. (3-15-02)

c. If required, the applicant shall satisfactorily complete a treatment program accepted by the Board. (3-30-07)

d. The applicant must agree to participation in the Board's monitoring program to include: (3-15-02)

i. Evaluation and diagnosis of ~~disability~~ the disorder; (5-21-89)(____)

ii. Approval of treatment program regimen; (5-21-89)

iii. Monitoring of progress; (5-21-89)

- iv. Determination of when return to the workplace will be allowed. (7-1-96)
- e. Admission to the Program for Recovering Nurses or issuance of a limited license, or both, may be denied for any reason including, but not limited to the following: (3-15-02)
- i. The applicant diverted controlled substances for other than self-administration; or (3-15-02)
- ii. The applicant creates too great a safety risk; or (3-15-02)
- iii. The applicant has been terminated from this, or any other, alternative program for non-compliance. (3-15-02)
- f. Upon satisfactory compliance with all of the terms of the limited license, and provided that the licensee demonstrates that he is qualified and competent to practice nursing, the executive director shall reinstate the renewable nursing license voluntarily surrendered. (3-30-07)
- 05. Compliance Required.** Limited licensure shall be conditioned upon the individual's prompt and faithful compliance with ~~the following terms and conditions, which may include:~~ (3-30-07)()
- a. Satisfactory progress in any required continuing treatment or rehabilitation program. (3-15-02)
- b. Regular and prompt notification to the Board of changes in name and address of self or any employer. (7-1-96)
- c. Obtaining of performance evaluations prepared by the employer to be submitted at specified intervals and at any time upon request. (7-1-96)
- d. Continuing participation in, and compliance with all recommendations and requirements of, the approved treatment or rehabilitation program, and obtaining of reports of progress submitted by the person directing the treatment or rehabilitation program at specified intervals and at any time upon request. (7-1-96)
- e. Submission of ~~written~~ self-evaluations and personal progress reports at specified intervals and at any time upon request. (7-1-93)()
- f. Submission of reports of supervised random alcohol/drug screens at specified intervals and at any time upon request. Participant is responsible for reporting as directed, submitting a sufficient quantity of sample to be tested, and payment for the screening. (7-1-96)
- g. Meeting with the Board's professional staff ~~or advisory committee~~ at any time upon request. (7-1-93)()
- h. Working only in approved practice settings. (7-1-96)
- i. Authorization by licensee of the release of applicable records pertaining to assessment, diagnostic evaluation, treatment recommendations, treatment and progress, performance evaluations, counseling, random chemical screens, and after-care at periodic intervals as requested. (7-1-93)
- j. ~~Obedience to~~ **Compliance with** all laws pertaining to nursing practice, all nursing standards, and all standards, policies and procedures of licensee's employer relating to any of the admitted misconduct or facts as set out in the written statement signed by licensee, or relating to the providing of safe, competent ~~or proper~~ nursing service. (7-1-93)()
- k. Compliance with other specific terms and conditions as may be required by the executive director. (3-15-02)
- 06. Summary Suspension - Lack of Compliance.** (3-30-07)

a. Summary Suspension. Any failure to comply with the terms and conditions of a limited license shall be deemed to be an immediate threat to the health, safety, and welfare of the public and the executive director shall, upon receiving evidence of any such failure, summarily suspend the limited license. (3-30-07)

i. Summary suspension of a limited license may occur if, during participation in the program, information is received which, after investigation, indicates the individual may have violated a provision of the law or Board rules governing the practice of nursing. (3-30-07)

ii. Upon summary suspension of a limited license, the executive director shall provide prompt written notice to the licensee stating the reason for the suspension, setting forth the evidence relied upon and notifying the licensee of his right to a hearing upon request at the earliest possible date in accordance with Section 54-1413(3)(a), Idaho Code. (3-30-07)

b. Right to Hearing. An individual whose limited license has been summarily suspended by the executive director may request a hearing regarding the suspension by certified letter addressed to the Board. If the individual fails to request a hearing within twenty (20) days after service of the notice of suspension by the executive director, the right to a hearing is waived. If a hearing is timely requested, after the hearing the Board shall enter an order affirming or rejecting summary suspension of the limited license and enter such further orders revoking, suspending, or otherwise disciplining the nursing license as may be necessary. The above provisions do not limit or restrict the right of Board staff to bring any summary suspension order before the Board for further proceedings, even if the licensee has not requested a hearing. (4-2-08)

c. Other Orders. The Board may, for good cause, stay any order of the executive director or may modify the terms and conditions of a limited license as deemed appropriate to regulate, monitor or supervise the practice of any licensee. (3-30-07)

133. ADVISORY COMMITTEE.

The Board shall appoint a committee of at least six (6) persons to provide guidance to the Board on matters relating to nurses ~~disabled whose practice is or may be impaired~~ due to ~~alcohol or drug substance use disorder~~ or ~~to emotional or mental impairment health disorder~~, and advise the Board on the direction of the program. Committee members shall include a member of the Board who shall serve as the chairperson and other members as established by the Board, but shall include persons who are knowledgeable about ~~disabilities~~ mental health and substance use disorders. (7-1-96)()

(BREAK IN CONTINUITY OF SECTIONS)

315. PRESCRIPTIVE AND DISPENSING AUTHORIZATION FOR ADVANCED PRACTICE REGISTERED NURSES.

01. Initial Authorization. An application for the authority to prescribe and dispense pharmacologic and non-pharmacologic agents may be made as part of initial licensure application or by separate application at a later date. Advanced practice registered nurses who complete their APRN graduate or post-graduate educational program after December 31, 2015, will automatically be granted prescriptive and dispensing authority with the issuance of their Idaho license. (7-1-13)

a. An advanced practice registered nurse who applies for authorization to prescribe pharmacologic and non-pharmacologic agents within the scope of practice for the advanced practice role, shall: (7-1-13)

~~**i.** Be currently licensed as an advanced practice registered nurse in Idaho;~~ (7-1-99)

ii. Provide evidence of completion of thirty (30) contact hours of post-basic education in pharmacotherapeutics obtained as part of study within a formal educational program or continuing education program, related to advanced nursing practice. (7-1-13)

- ~~ii.~~ Submit a completed, notarized application form provided by the Board; and (7-1-99)
- ~~iv.~~ ~~Remit fees prescribed in Section 901 of these rules.~~ (~~7-1-13~~)
- b. Exceptions to the pharmacotherapeutic education may be approved by the Board. (7-1-99)
- c. Prescriptions written by authorized advanced practice registered nurses shall comply with all applicable state and federal laws and be signed by the prescriber with the abbreviation for the applicable role of advanced nursing practice, the identification number assigned by the Board and where applicable, the Idaho Board of Pharmacy controlled substance registration number and the federal Drug Enforcement Agency registration number. (7-1-13)

02. Temporary Authorization. The Board may grant temporary prescriptive authority to an applicant who holds a temporary advanced practice registered nurse license and who meets the requirements for initial authorization pursuant to Subsection 315.01 of these rules. (7-1-99)

03. Expiration of Temporary Prescriptive Authorization. Temporary prescriptive authorization automatically expires on the expiration, revocation, suspension, placement on probation, or denial of any advanced practice registered nurse license. (7-1-99)

04. Prescribing and Dispensing Authorization. All authorized advanced practice registered nurses may prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws. (7-1-13)

05. Valid Advanced Practice Registered Nurse/Patient Relationships. (7-1-13)

a. An advanced practice registered nurse shall not dispense pharmacologic agents except in the course of his professional practice and when a bona fide advanced practice registered nurse/patient relationship has been established. A valid relationship will exist when the advanced practice registered nurse has obtained sufficient knowledge of the patient's medical condition through examination and has assumed responsibility for the health care of the patient. (7-1-13)

b. A valid advanced practice registered nurse/patient relationship is not required when dispensing or prescribing medications under the circumstances set forth at Section 54-1733(4), Idaho Code. (7-1-13)

(BREAK IN CONTINUITY OF SECTIONS)

641. FACULTY.

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~~ program objectives. (~~4-5-00~~)()

(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: (4-7-11)

01. Licensed Registered Nurse Renewal Fee. Licensed registered 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 Registered Nurse ~~Renewal Fee~~. Licensed advanced practice registered 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)~~

05.4. 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)

06.5. 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)

901. LICENSURE FEES.

Fees will be assessed for licensure of registered and practical nurses by examination and endorsement, and for temporary licenses and verification of licensure to another state. (6-1-78)

01. Licensure by Examination. A fee will be assessed applicants for licensure by examination as follows: (3-30-01)

a. Registered nurse applicants: ninety dollars (\$90). (3-30-01)

b. Practical nurse applicants: seventy-five dollars (\$75). (3-30-01)

02. Advanced Practice Registered Nurses. Advanced practice registered nurse applicants: ninety dollars (\$90). (3-30-01)

03. Licensure by Endorsement. The fee assessed for licensure by endorsement of licensed registered and licensed practical nurses will be one hundred ten dollars (\$110). (3-30-06)

04. Verification of Licensure Fee. Licensed registered and licensed practical nurses requesting verification of licensure to another state will be assessed a fee of thirty dollars (\$30) which will be due upon request. (3-30-01)

~~**05. Authorization Fee.** Advanced practice registered nurses will be assessed an authorization fee of fifty dollars (\$50) which will be due upon application. (3-30-01)~~

06.5. Emeritus License Fee. Applicants requesting emeritus status will be assessed a fee of twenty-five dollars (\$25), which will be due upon application. (4-2-03)

07.6. Temporary License Fee. Registered and practical nurses requesting a temporary license will be assessed a fee of twenty-five dollars (\$25) which will be due upon application. (3-30-01)

08.7. Limited License Fee. Persons who are issued a limited license following disciplinary action or

temporary voluntary surrender of a license will be assessed a fee of one hundred dollars (\$100) which will be due upon issuance of the limited license. (3-30-01)

098. **Records Verification Fee.** Thirty-five dollars (\$35). (3-30-07)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.03.01 – RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 54-707, 54-708, 54-709, and 54-711, Idaho Code.

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

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 618-621](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 54-708, 54-709, 54-711, Idaho Code.

Rule 150 is being amended to separate the application fee from the original license fee and to set the application fee at \$150 and the original license fee at \$150. The annual renewal fee will increase from \$100 to \$150; the inactive license fee will increase from \$50 to \$100; the temporary license fee will increase from \$50 to \$100 and the intern permit fee of \$100 will be added. The inactive retired fee is being deleted.

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 fee rule, contact Mitchell Toryanski at (208) 334-3233.

DATED this 2nd day of November, 2016.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE WAS 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 54-707, 54-708, 54-709, and 54-711, 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 19, 2016.

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 150 is being amended to separate the application fee from the original license fee and to set the application fee at \$150 and the original license fee at \$150. The Board's expenses have been exceeding its revenues. This change will help balance the Board's annual budget while maintaining the services necessary to protect the public. The Board is also amending Rule 600 to clarify the peer review process.

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

The annual renewal fee will increase from \$100 to \$150; the inactive license fee will increase from \$50 to \$100; the temporary license fee will increase from \$50 to \$100 and the intern permit fee of \$100 will be added. The inactive retired fee is being deleted. These fees or charges are being imposed pursuant to Sections 54-708, 54-709, and 54-711.

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 proposed changes to these rules were discussed during noticed, open meetings 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 Mitchell Toryanski 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 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-0301-1601

150. FEES (RULE 150).

- 01. Application Fee.** Application Fee ~~(includes original license)~~ - ~~Two~~ **One** hundred fifty dollars (\$~~2~~**1**50). ~~(3-10-00)~~(____)
- 02. Original License Fee.** Original License Fee – One hundred fifty dollars (\$150). (____)
- 023. Annual Renewal Fee.** Annual Renewal Fee - One hundred ~~100~~**fifty** dollars (\$1~~0~~**5**0). ~~(7-1-93)~~(____)

- ~~034.~~ **Inactive License.** Inactive License - ~~Fifty~~ **One hundred** dollars (\$~~5~~**100**). (~~7-1-93~~)()
- ~~04.~~ ~~**Inactive.** Inactive (retired, age sixty five (65) and over) License – Five dollars (\$5).~~ (~~7-1-93~~)
- 05.** **Temporary Permit Fee.** Temporary Permit Fee - ~~Fifty~~ **One hundred** dollars (\$~~5~~**100**). (~~7-1-93~~)()
- 06.** **Intern Permit Fee.** Intern Permit Fee – **One hundred** dollars (\$**100**). ()
- ~~067.~~ **Non-Refundable.** All fees are non-refundable. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

600. CHIROPRACTIC PEER REVIEW (RULE 600).

01. Purpose and Composition of Peer Review Committee. There is hereby established a Peer Review Committee, the members of which will function at the will of the Idaho State Board of Chiropractic Physicians. (7-1-98)

a. The purpose of the Peer Review Committee is to review those matters relative to the appropriateness, quality, utilization, and cost of chiropractic care in the state of Idaho. (7-1-98)

b. The Committee will be comprised of a chairman and a minimum of five (5) members, all of whom will be appointed by the members of the Board, and all of whom will serve at the pleasure of the Board. They may be removed from the Committee by vote of the Board, at any time, without cause. (7-1-98)

c. The Board will appoint one (1) of its members to act as a liaison between the Board and the Committee. This liaison will serve at the pleasure of the Board and may be removed by the Board, at any time, without cause. (7-1-98)

02. Definitions. (7-1-98)

a. “Board” means the Idaho State Board of Chiropractic Physicians. (7-1-98)

b. “Patient” means an individual who has received treatment from an Idaho licensed chiropractor, or who has received treatment under the supervision or direction of an Idaho licensed chiropractor, which treatment is within the scope of practice for a chiropractor within the state of Idaho. (7-1-98)

c. “Peer Review” means an evaluation performed by members of the Committee, which review will include the appropriateness, quality, utilization, and cost of chiropractic services and ethical performance of chiropractic care. (7-1-98)

d. “Peer Review Committee Members” shall mean those individuals appointed by the Board to serve on the Peer Review Committee. (7-1-98)

e. “Individual Reviewers” means those individual members of the Committee who are designated by the chairman of the Committee to conduct a peer review evaluation of any particular matter. (7-1-98)

03. Committee Criteria. (7-1-98)

a. Requirements for Membership: To be considered for appointment to the Committee, an applicant shall: (7-1-98)

i. Hold a current Idaho license to practice chiropractic, which license is in good standing and which has never been the subject of a formal disciplinary action in any jurisdiction; (7-1-98)

ii. Be actively engaged in the practice of chiropractic for the past four (4) years, with the most recent two (2) of those years having been spent in Idaho. (7-1-98)

iii. Obtain such peer review training as may be required by the Board. (3-15-02)

b. Appointment Process: Each year the Board will notify all Idaho licensed chiropractors of the process and deadlines by which they may self-submit for membership on the Committee. (7-1-98)

i. The submissions will be maintained on file for one (1) year; after which time they will be discarded without notice to the applicants. (7-1-98)

ii. The Board will notify those individuals who are named to the Committee of their appointment. (7-1-98)

c. Limitations of Peer Review Committee Members. While serving on the Peer Review Committee, a member shall not: (7-1-98)

i. Solicit to do independent medical examinations and/or reviews for insurance companies, attorneys or other third parties; (7-1-98)

ii. Utilize any designation or other reference to Committee membership on any advertisement, including telephone book, office, letterhead, or any other place. (7-1-98)

d. Reimbursement: Committee members will be afforded expense reimbursement in accordance with state employee travel regulations upon Board approval. (7-1-98)

04. Standards. (7-1-98)

a. In conducting any review, the Committee will utilize the Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference, and Procedural/Utilization Facts, Chiropractic/Physical Therapy Treatment Standards, a Reference Guide, 6th Edition, Robert E. Olson, D.C. (3-30-07)

b. The reviewing chiropractors will be expected to utilize their own experience and other reference sources in ascertaining the reasonableness and appropriateness of care provided. (7-1-98)

05. Who May Utilize the Services of the Committee. A request for peer review may be submitted to the Committee by a patient, the patient's legal representative, an insurer or other third-party payor or health care provider, or the treating chiropractic physician. (7-1-98)

06. Form of Request. A request for peer review must be submitted to the Committee on forms available from the Board offices. (7-1-98)

07. Fees for Review. The following fees will be assessed: (7-1-98)

a. If review is requested by a patient: no charge. (7-1-98)

b. If review is requested by a treating physician, an insurer or third party provider: (7-1-98)

i. One hundred twenty-five dollars (\$125) for a review of claims in the amount of one thousand dollars (\$1,000) or less; (3-30-01)

ii. Two hundred fifty dollars (\$250) for a review of claims in the amount of one thousand one dollars (\$1,001) or more and not exceeding three thousand dollars (\$3,000); (3-30-01)

iii. Three hundred fifty dollars (\$350) for a review of claims in the amount of three thousand one

dollars (\$3,001) or more; (3-30-01)

c. Payment for reviews by the insurer or third-party provider is required prior to implementation of any review process. (7-1-98)

08. Procedures for Review. (7-1-98)

a. All reviews will be blind reviews. The identity of the patient, treating physician, and any insurer or third-party payor for the services will be unknown to the individual reviewers. (7-1-98)

b. Peer review will be conducted only upon request. The opportunity for participation in the review will be made available to the non-requesting party or parties. With the exception of the treating chiropractic physician, there is no requirement of participation in the peer review process. (7-1-98)

c. A treating chiropractic physician shall fully cooperate with a peer review and shall respond to any inquiry and deliver all records requested by the committee or its agent within fourteen (14) days. ()

ed. Reviews will be conducted by three (3) individual reviewers, to be chosen from the membership of the Committee by the chairman. (7-1-98)

de. The individual reviewers will conduct their evaluation, reach an agreement as to their recommended outcome, and report that outcome recommendation to the chairman. ~~If any of the parties desire to appeal this decision, they may within sixty (60) days of the decision notify the chairman who will appoint one (1) new reviewer to conduct an evaluation and report the outcome to the chairman. There will be no further rights to appeal. Decisions~~ The recommendation of the individual three reviewers s will not be subject to challenge appeal. (4-11-06)()

ef. ~~The chairman will provide regular reports to the Board liaison.~~ If it is the opinion of the reviewers that a licensed chiropractic physician has violated any of the laws and rules governing continued licensure, the ~~Committee~~ chairman will notify the Board liaison, immediately. ~~The liaison will then~~ refer the matter original request for peer review for further investigation and potential disciplinary action by the Board. The chairman will also immediately notify the Board liaison (7-1-98)()

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.10.01 – RULES OF THE STATE BOARD OF OPTOMETRY

DOCKET NO. 24-1001-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-1509, Idaho Code.

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

The rules are being amended to align the reinstatement section with 67-2614, Idaho Code. They also increase continuing education credit allowed for correspondence courses, individual home study and observation from six (6) to nine (9) hours per year. The change to the text of the proposed rule is to correct a clerical error that appeared in the published Notice of Rulemaking – Proposed Fee Rule.

The text of the pending fee 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 original text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 622-624](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 54-1509, 54-1522, and 67-2614, Idaho Code.

Rule 250 is being amended to align the reinstatement rule with 67-2614, Idaho Code. This amendment will also reduce the reinstatement fee from \$150 to \$35.00

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 fee rule, contact Mitchell Toryanski at (208) 334-3233.

DATED this 21st day of November, 2016.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W. State St.
P O Box 83720
Boise, ID 83720-0063
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE WAS 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 54-1509, 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 19, 2016.

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 2016 Legislature passed House Bill 333 which amended the renewal and reinstatement statute to require that renewal and reinstatement be in compliance with Section 67-2614, Idaho Code. This proposed rule reflects this change and increases the number of continuing education hours for which licensees may receive credit from six (6) to nine (9) annually.

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

This amendment lowers the license reinstatement fee from \$150 to \$35.00.

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 proposed changes to these rules were discussed during noticed, open meetings 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 Mitchell Toryanski 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 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

Italicized red text that is *double underscored* is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1001-1601

250. LICENSES CANCELED FOR FAILURE TO RENEW (RULE 250).

~~Any person whose license has been canceled for failure to renew for a period of less than five (5) years may be reinstated upon payment of the renewal fee for each year the license was lapsed, payment of a one hundred fifty dollars (\$150) reinstatement fee, and upon providing documentation of having met the continuing education requirement for each year their license was lapsed~~ A license that has been canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Any person whose license to practice optometry has been canceled for failure to renew for a period ~~in excess of~~ more than five (5) years ~~may be reinstated~~ must apply for a new license in accordance with the requirements of Section 67-2614, Idaho Code, ~~subject to examination by the State Board of Examiners of the State Board of Optometry at its discretion.~~ (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

300. CONTINUING EDUCATION IN OPTOMETRY (RULE 300).

01. Hours Required, Advance Approval. (4-11-15)

a. Until January 1, 2017, each optometrist licensed by the state of Idaho shall attend, in each twelve-month (12) period preceding the renewal of his license, a minimum of twelve (12) full hours of approved optometric continuing education courses or meetings. (4-11-15)

b. Effective January 1, 2017, each optometrist licensed by the state of Idaho shall attend in each calendar year prior to license renewal, a minimum of twelve (12) full hours of approved optometric continuing education courses or meetings. (4-11-15)

c. Approved optometric continuing education courses or meetings shall be those post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. In addition, all Council on Optometric Practitioners Education (COPE) approved courses are approved for continuing education credit. If an optometrist attends or plans to attend a course of study or seminar which has not been approved in advance, he may petition the Board for approval of that educational course of study, setting forth a description of the course. The Board may, in its discretion, approve the course upon review of the material submitted either in advance or after completion of the course. (4-11-15)

02. Additional Hours Required to Use Therapeutic Pharmaceutical Agents. (4-11-15)

a. Until January 1, 2017, each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend, in each twelve-month (12) period preceding the renewal of his license, a minimum of six (6) additional full hours of approved optometric courses or meetings. (4-11-15)

b. Effective January 1, 2017, each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend in each calendar year prior to license renewal, a minimum of six (6) additional full hours of approved optometric courses or meetings. (4-11-15)

c. This six (6) hours of continuing education must be in courses involving ocular pharmacology and/or advanced ocular disease and are in addition to the twelve (12) hours of continuing education required under Subsection 300.01. (4-11-15)

03. Correspondence/Home Study Courses/Observation. The Board allows credit for correspondence courses, individual home study and observation that is germane to the practice of optometry. No

more than ~~six (6)~~ nine (9) hours of continuing education shall be permitted each year in correspondence courses or other continuing education obtained from “home study” courses or observation. ~~(3-30-07)~~ ()

04. Waiver of Requirements. The Board of Optometry shall waive the continuing education requirement for the first license renewal after initial licensure. The Board of Optometry may, upon application, waive the requirements of this rule in cases involving illness, unusual circumstances interfering with the optometrist’s ability to practice or inability to conform to the rules due to military duty. (3-15-02)

05. Renewal Application Form. Each licensed Idaho optometrist will be furnished a license renewal application form by the State Board of Optometry on which each optometrist shall attest on their annual license renewal application that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action. (3-20-04)

06. Audit. The Board may conduct audits to confirm that the continuing education requirements have been met. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (3-20-04)

07. Documentation of Attendance. It shall be necessary for each licensed Idaho optometrist to provide documentation verifying attendance or completion of continuing education by securing authorized signatures, documentation, or electronic verification 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 upon request by the Board or its agent. (4-4-13)

08. Excess Hours. A licensee may carryover a maximum of six (6) hours of continuing education to meet the next year’s continuing education requirement. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) year. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

575. FEES (RULE 575).

- 01. Annual Renewal Fee.** Annual renewal fee for license - seventy-five dollars (\$75). (7-1-97)
- 02. Annual Fund Fee.** Annual fund fee - seventy-five dollars (\$75). (4-4-13)
- 03. License Application Fee.** License application fee - one hundred dollars (\$100). (7-1-93)
- 04. Certificate to Obtain and Use Pharmaceutical Agents Fee.** Certificate to obtain and use pharmaceutical agents fee - ten dollars (\$10). (3-30-01)
- 05. Reinstatement Fee.** Reinstatement fee is as provided in Section 67-2614, Idaho Code. ()

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.19.01 – RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-4205, Idaho Code.

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

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 654-656](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 54-4205 and 67-2614, Idaho Code.

This rule change will increase the reinstatement fee for expired residential care administrator licenses from \$25 to \$35.

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 Mitchell Toryanski at (208) 334-3233.

DATED this 2nd day of November, 2016.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE WAS 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 54-4205, 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 19, 2016.

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 2016 Legislature passed House Bill 332 which amended the renewal and reinstatement statute to require that renewal and reinstatement be in compliance with Section 67-2614, Idaho Code.

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

This rule change will increase the reinstatement fee for expired residential care administrator licenses from \$25 to \$35. It is estimated that there will be a positive impact of \$330 to the Bureau of Occupational Licenses dedicated fund. This fee or charge is being imposed pursuant to Sections 54-4205 and 67-2614, Idaho Code.

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 proposed changes to these rules were discussed during noticed, open meetings 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 Mitchell Toryanski 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 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1901-1601

401. CONTINUING EDUCATION (RULE 401).

01. Minimum Hours Required. Applicants for annual renewal ~~shall be~~ **or reinstatement are** required to complete a minimum of twelve (12) hours of continuing education courses within the preceding twelve (12) month period. Basic First Aid, Cardio-Pulmonary Resuscitation, medication assistance, or fire safety courses shall not be considered for continuing education credit. (3-30-06)()

02. Course Approval. Courses of study relevant to residential care facility administration and sponsored or provided by the following entities or organizations shall be approved for continuing education credits: (3-30-06)

a. Accredited colleges or universities. (3-30-06)

- b. Federal, state or local government entities. (3-30-06)
- c. National or state associations. (3-30-06)
- d. Otherwise approved by the Board based upon documentation submitted by the licensee or course provider reviewing the nature and subject of the course and its relevancy to residential care administration, name of instructor(s) and their qualifications, date, time and location of the course and procedures for verification of attendance. (3-30-06)

03. Credit. Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or by computer on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Each licensee shall maintain proof of attendance or successful completion documentation of all continuing education courses for a period of three (3) years. (3-30-06)

04. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health, when 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. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

500. RENEWAL/RE-CERTIFICATION/ AND REINSTATEMENT OF EXPIRED LICENSE (RULE 500).
~~Licenses shall expire and be renewed annually in accordance with Section 67-2614, Idaho Code. The Board shall refuse to renew a residential care administrators license unless the required fee is accompanied by an affidavit signed by the applicant setting forth the applicant's completion of continuing education requirements~~ Licenses must renew their licenses annually as set forth in Section 67-2614, Idaho Code, and may reinstate their licenses within five (5) years after expiration as provided in Section 67-2614, Idaho Code. (4-2-03)()

~~**01. Requirements for Reinstatement.** Applicants seeking reinstatement of a license canceled for failure to renew within five (5) years of the cancellation period, must pay a twenty-five dollar (\$25) reinstatement fee plus the back year or years fees and shall provide verification of twelve (12) hours of continuing education. (7-1-98)~~

~~**02. Beyond a Five Year Lapse.** Beyond a five (5) year lapse, the applicant will be treated as a new applicant and application shall be made on the same forms as an application for an original license. (7-1-93)~~

501. -- 599. (RESERVED)

600. FEES (RULE 600).

- 01. License Application Fee.** License application -- one hundred fifty dollars (\$150). (4-6-15)
- 02. Annual Renewal Fee.** Annual renewal fee -- one hundred fifty dollars (\$150). (4-6-15)
- 03. Provisional/Temporary Permit Fee.** Provisional/~~temporary~~ permit fee -- one hundred fifty dollars (\$150). (4-6-15)()
- 04. Reinstatement Fee.** Reinstatement ~~--- twenty-five dollars (\$25) fee is as provided in Section 67-2614, Idaho Code.~~ fee is as provided in Section 67-2614, Idaho Code. (7-1-93)()
- 05. Reissuance of Lost License Fee.** Reissuance of lost license -- ten dollars (\$10). (7-1-93)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSE

24.23.01 – RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD

DOCKET NO. 24-2301-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-2910, Idaho Code.

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

These rules are being amended to define Audiology Support Personnel along with the criteria for Support Personnel to ensure public safety in the practice of Audiology. These amended rules also establish qualifications for Hearing Aid Dealer and Fitter Supervisors which will ensure provisional permit holders obtain adequate training. These rules will also reduce the fees for original license and license renewal.

The Board has decided not to strike Section 470 because it is still required pursuant to Section 54-2919, Idaho Code.

The text of the pending fee 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 original text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 659-667](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 54-2910, 54-2912, 54-2913, 54-2914, 54-2915, and 54-2921, Idaho Code. These rules reduce the fees for an original license from \$100 to \$70 and for annual license renewal from \$125 to \$100.

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 fee rule, contact Mitchell Toryanski at (208) 334-3233.

DATED this 1st day of November, 2016.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE WAS 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 54-2910, 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 19, 2016.

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 are being amended to define Audiology Support Personnel along with the criteria for Support Personnel to ensure public safety in the practice of Audiology. These amended rules also establish qualifications for Hearing Aid Dealer and Fitter Supervisors which will ensure provisional permit holders obtain adequate training. Finally, the Board is striking the subsection dealing with Audiology Provisional Permits as the training programs for Audiology are doctorate level and require experience as part of the curriculum. These rules will also reduce the fees for original license and license renewal.

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

These rules reduce the fees for an original license from \$100 to \$70 and for annual license renewal from \$125 to \$100. These fees or charges are being imposed pursuant to Sections 54-2910, 54-2912, 54-2913, 54-2914, 54-2915, and 54-2921, Idaho Code.

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 proposed changes to these rules were discussed during noticed, open meetings 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 Mitchell Toryanski 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 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-2301-1601

010. DEFINITIONS (RULE 10).

- 01. Board.** The Speech and Hearing Services Licensure Board as prescribed in Section 54-2908, Idaho Code. (3-30-06)
- 02. Bureau.** The Bureau of Occupational Licenses as prescribed in Sections 54-2903 and 67-2602, Idaho Code. (3-30-06)
- 03. Audiology Support Personnel.** Unlicensed natural persons who work under the direction and supervision of an audiologist who is licensed in accordance with Title 54, Chapter 29, Idaho Code and is engaged in the practice of audiology. ()

(BREAK IN CONTINUITY OF SECTIONS)

175. FEES (RULE 175).

- Applications should not be filed unless the applicant can meet all requirements. (3-30-06)
- 01. Application Fee.** Application Fee - Thirty dollars (\$30). (3-30-06)
- 02. Original License Fee.** The original license fee is ~~one hundred~~ seventy dollars (~~\$107~~) to be accompanied by the completed application. (~~3-30-06~~) ()
- 03. Examination/Reexamination Fee.** Examination fee shall be that charged by the examination provider plus an administration fee of fifty dollars (\$50) when the examination is administered by the Board. (3-30-06)
- 04. Provisional Permit.** Provisional permit fee is one hundred dollars (\$100). (3-30-06)
- 05. Annual Renewal Fee.** Annual renewal fee is one hundred ~~twenty-five~~ dollars (~~\$125~~00). (~~3-29-10~~) ()
- 06. Annual Renewal Fee for Inactive License.** Annual renewal fee is sixty-five dollars (\$65). (3-27-13)
- 07. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license or examination fees for unexcused applicants. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

211. SUPPORT PERSONNEL: AUDIOLOGY (RULE 211).

- 01. Supervising Audiologist – Responsibilities – Restrictions.** ()
- a. The supervising audiologist, a person licensed to practice audiology under Title 54, Chapter 29, Idaho Code, is responsible for everything audiology support personnel do or fail to do while performing their duties under the supervising audiologist's supervision.** ()

- b.** Responsibilities of the supervising audiologist include but are not limited to: ()
- i.** Hiring, training, assessing the competency, and evaluating the performance of audiology support personnel. ()
- ii.** Approving or disapproving all orders and directives concerning audiology tasks issued by administrators or other managers. ()
- iii.** Assigning audiology tasks to audiology support personnel and supervising the performance of those tasks. Assigned tasks must not exceed the knowledge and skills of audiology support personnel nor require the exercise of professional judgment, interpretation of test results, or the development or modification of treatment plans. ()
- iv.** Assessing the abilities of audiology support personnel to perform assigned audiology tasks. ()
- v.** Providing feedback to audiology support personnel to facilitate improved job performance. ()
- c.** The number of audiology support personnel that an audiologist may supervise at any one time must be consistent with the delivery of appropriate, quality service, and Title 54, Chapter 29, Idaho Code. ()
- d.** An audiologist must supervise audiology support personnel in the following manner: ()
- i.** A supervising audiologist must directly supervise audiology support personnel no less than one time for every five times that support personnel provide audiology services to a patient (20%). Direct supervision requires in-view real-time observation and guidance while an assigned activity is performed. This requirement can be met when the supervisor is providing supervision from a distant site using two-way video and audio transmission. The supervising audiologist will document and retain a record of all direct supervision periods. ()
- ii.** When not providing direct supervision, the supervising audiologist must provide direction and supervision to audiology support personnel while support personnel are providing audiology services to a patient by making themselves accessible to the support personnel by telephone, video conferencing or in person. ()
- 02. Audiology Support Personnel – Roles – Restrictions.** ()
- a.** Audiology support personnel perform only tasks that are planned, delegated, and supervised by the supervising audiologist. Duties and responsibilities are assigned based on training, available supervision, and specific work setting. ()
- b.** Authorized audiology support personnel tasks include but are not limited to the following: ()
- i.** Greet and escort patients. ()
- ii.** Schedule patients. ()
- iii.** Package and dispatch by mail ear-mold orders, devices for repair, and manufacturer/lab returns. ()
- iv.** Maintain an inventory of supplies. ()
- v.** Check equipment for functionality. ()
- vi.** Test hearing aids and other amplification devices. ()
- vii.** Troubleshoot and perform minor repairs to hearing aids, ear molds, and other amplification devices. ()
- viii.** Clean hearing aids and other amplification devices. ()

- ix. Perform electroacoustic analysis of hearing aids and other amplification devices. ()
- x. Instruct patients in the proper use and care of hearing aids and other amplification devices. ()
- xi. Demonstrate how to use alerting and assistive listening devices. ()
- xii. Instruct patients on how to perform proper ear hygiene. ()
- xiii. Assist audiologist in treatment programs. ()
- xiv. Assist audiologist with setup and technical tasks. ()
- xv. Prepare materials for ear impressions. ()
- xvi. Maintain and restock testing and treatment rooms. ()
- xvii. Perform equipment maintenance and biological checks. ()
- xviii. Conduct hearing and tympanic screening on children and adults without interpretation. ()
- xix. Conduct otoacoustic emission screening. ()
- xx. Perform non-diagnostic otoscopy. ()
- xxi. Perform pure-tone audiological reassessment on established patients. ()
- xxii. Prepare patients for videoendostagmography/electronystagmography or evoked testing. ()
- xxiii. Assist audiologists to test the hearing of pediatric patients. ()
- xxiv. Perform universal newborn hearing screening tests. ()
- xxv. Perform infection control duties with the clinic/service. ()
- xxvi. Assist patients in recording their case history and completing other relevant forms. ()
- xxvii. Communicate with hearing instrument manufacturers and suppliers regarding the status of orders and repairs. ()
- xxviii. Facilitate the exchange of information between audiologist and patient when differences in languages or culture are an issue. ()
- xxix. Assist in clinical research. ()
- c. Audiology support personnel are prohibited from performing the following: ()
 - i. Any task prohibited by state or federal law. ()
 - ii. Any task not expressly approved by the supervising audiologist. ()
 - iii. Interpreting observations or data into diagnostic statements of clinical management strategies or procedures. ()
 - iv. Determining case selection. ()
 - v. Transmitting clinical information, either verbally or in writing, to anyone without the approval of

the supervising audiologist. ()

vi. Composing clinical reports except for progress notes to be reviewed by the audiologist and held in the client's records. ()

vii. Referring a patient/client to other professionals or agencies. ()

viii. Referring to self or using in connection with audiology support person's name, any title other than one determined by the supervising audiologist that is consistent with state and federal law. ()

ix. Signing any formal documents (e.g. treatment plans, reimbursement forms, or reports). ()

x. Discharging a patient/client from services. ()

xi. Communicating with a patient/client's family or others regarding any aspect of the patient/client's status or services without the specific consent of the supervising audiologist. ()

03. Audiology Support Personnel certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC) – Roles – Restrictions. ()

a. Audiology support Personnel who are certified by the CAOHC as a Certified Occupational Hearing Conservationist (COHC) may perform the following tasks under the supervision of a licensed audiologist in addition to those tasks set forth in Subsection 211.02.b: ()

i. Check and calibrate audiometric instrumentation. [see Rule 211.02.b.v & vi] ()

ii. Conduct otoscopic screening and pure-tone threshold testing. ()

iii. Counsel employees about test results and the criteria for employee referral. ()

iv. Fit employees and train them on personal hearing protection devices. ()

v. Fit hearing protection devices for testing. ()

vi. Assist CAOHC course directors in the conduct of training. ()

vii. Educate, train, and motivate employees to conserve their hearing. ()

viii. Maintain business and medical records. ()

ix. Generate periodic hearing conservation statistical reports. ()

b. In addition to being prohibited from performing the tasks listed in Subsection 211.02.c, CAOHC's are also prohibited from performing the following tasks: ()

i. Assuming the role of a professional supervisor of the audiometric monitoring portion of a hearing conservation program. ()

ii. Assuming the role of instructor of other occupation hearing conservationists. ()

iii. Interpreting audiograms. ()

iv. Conducting any type of audiometric testing other than air conduction (e.g. not bone-conduction testing or speech audiometry). ()

v. Diagnosing hearing disorders. ()

- vi. Independently evaluating a hearing conservation program's effectiveness. ()
- vii. Conducting noise surveys and analyzing or assuming responsibility for noise-control solutions. ()
- 04. Audiology Support Personnel – Pre-Service and In-Service Instruction.** ()
 - a. The supervising audiologist is responsible for the training of audiology support personnel and for maintaining a written record of completed training activity. ()
 - b. Training will be conducted pre-service (before tasks are assigned) and in-service (after tasks are assigned). The quality and content of training is left to the discretion of the supervising audiologist. The following guidelines apply to both pre-service and in-service training. ()
 - i. Training should be well-defined and specific to assigned tasks. ()
 - ii. Supervising audiologists should ensure that the scope and intensity of training is sufficient to prepare audiology support personnel to successfully perform assigned tasks. ()
 - iii. Training should be competency based and be provided through a variety of formal and informal instructional methods accompanied by written policies and procedures. ()
 - iv. Supervising audiologists should provide audiology support personnel with a written description of their roles and functions. Audiologists should provide personnel with ongoing training opportunities to ensure that audiology practices are current and skills are maintained. ()
 - v. Training should include the identification of and appropriate response to linguistic and cultural challenges which may affect the delivery of service. ()

~~214~~2. -- 219. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

450. PROVISIONAL PERMIT: FITTING AND DEALING HEARING AIDS (RULE 450).

01. Issuance of a Provisional Permit. The Board may issue a provisional permit to allow a person to engage in fitting and dealing hearing aids provided that the holder of a provisional permit may practice only while under the supervision of a person fully licensed as a hearing aid dealer and fitter or audiologist under this chapter. (3-27-13)

02. Adequate Personal Contact -- Requirements. (3-30-06)

a. The supervisor and provisional permit holder must make personal contact each work day to review any assignments, client contacts, and hearing aid fittings for the first sixty (60) days of employment. The nature of the supervision and contact must allow for immediate feedback and includes audio/visual, in person, or telephone contacts. (3-27-13)

b. After the first sixty (60) days of employment, personal contact, described in Subsection 450.02.a., must be made no less than once in each calendar week throughout the remaining period of the permit. (3-27-13)

c. In the event a permit holder fails the licensing examination two (2) consecutive times, and is eligible to maintain a permit, the supervisor and permit holder must reinstate contact in person each work day as set forth in Subsection 450.02.a. (3-29-10)

03. Supervisor -- Qualifications -- Responsibilities -- Restrictions. (~~3-30-06~~)()

- a.** Supervisors. A supervisor must: ()
- i** Be approved in advance by the Board for each permit holder; and ()
- ii.** Hold either an Idaho hearing aid dealer and fitter license or an Idaho audiologist license that is current and in good standing and is renewed as provided in these rules; and ()
- iii** Not have been the subject of any disciplinary action by the Board or by any other jurisdiction for two (2) years immediately prior to being approved as a supervisor. ()
- b.** Supervisor that is a hearing aid dealer and fitter. A supervisor that is a hearing aid dealer and fitter must: ()
- i.** Hold a current board certificate in hearing instrument sciences (BC-HIS) from the National Board for Certification in Hearing Instrument Sciences; or ()
- ii.** Have actively practiced as a hearing aid dealer and fitter for at least three (3) years immediately prior to being approved as a supervisor. ()
- c.** Supervisor that is an audiologist. A supervisor that is an audiologist must have actively practiced audiology for at least one (1) year immediately prior to being approved as a supervisor. ()
- d.** The supervisor is responsible for all practice and conduct of each permit holder under supervision. (3-27-13)
- e.** A supervisor may not supervise more than two (2) permit holders at a time. (3-29-10)
- f.** The supervisor must have an established business site within the state of Idaho which ~~he~~ the supervisor regularly utilizes as a base of operation. The supervisor and the permit holder shall be required to work within the same facility. (~~3-29-10~~)()
- g.** The supervisor must provide the permit holder with adequate training and client contact necessary to prepare for the required examination. (3-30-06)
- h.** The supervisor of a hearing aid dealer and fitter permit holder must record with the Board a plan of training that encompasses all sections covered in the license examination. The plan must be accepted and approved by the Board or its agent prior to issuance of the permit. The supervisor shall document, by the quarterly report, the permit holder's progress. (3-27-13)
- i.** A supervisor may terminate ~~his~~ their supervision of a permit holder by a written notice to the Board and the permit holder by certified mail at least ten (10) calendar days prior to the termination. (~~3-27-13~~)()
- 04. Application -- Quarterly Reports.** (3-30-06)
- a.** Application for permit must include completed application, examination fee, permit fee, supervisor statement and plan of training and supervision. (3-30-06)
- b.** A permit is not valid unless an unrevoked statement accepting supervisory responsibility by a qualified licensee is on file with the Bureau. Upon termination of supervision, a new permit may be applied for in accordance with these rules, provided that the expiration date of the new permit is adjusted to not exceed the date of the third licensure examination following the original application. (3-30-06)
- c.** Twenty-four (24) months is the maximum time allowed for any combination of new or renewed permits. (3-27-13)
- d.** Every permit holder must submit a quarterly report of ~~his~~ their activities on forms furnished by the

Bureau together with supplemental attachments as may be necessary, attested to and signed by the permit holder and the supervisor of record. All sales or fittings made by the person holding a permit will be indicated on the quarterly report forms supplied by the Bureau. Supplemental attachments to be submitted with this form include:

~~(3-27-13)~~ ()

- i. Log of client and supervisor contacts shall be included in each quarterly report. (3-27-13)
- ii. Supervisor's statement of completion of training assignments by permit holder as specified in Subsection 450.03.f. (3-29-10)
- iii. Copy of test results for all persons tested by the permit holder whether or not a sale occurred. (3-30-06)
- iv. Copy of hearing aid order for all fittings including specifications of instruments ordered. Hearing aid dealers and fitters must provide a copy of hearing aid order. (3-27-13)
- e. Quarterly reports are due on or before April 10th, July 10th, October 10th and January 10th for the three (3) months preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, the permit may be revoked. (3-27-13)

f. Supervisors who fail to properly or adequately supervise permit holders as set forth in Subsection 450.03 will be subject to disciplinary action described in Section 54-2923, Idaho Code. ()

05. Exemptions. (3-30-06)

- a. A permit holder who is Board Certified by National Board for Certification in Hearing Instrument Sciences (NBC-HIS) shall be exempt from Subsections 450.02.a., 450.03.c., and 450.03.e. from the date of issuance of the permit until the date of the next offered licensing examination. (3-27-13)
- b. Failure of the licensing examination or failure to take the next offered licensing examination rescinds this exemption. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

~~601. -- 699.~~ (RESERVED)

~~700. ADOPTION AND EFFECTIVE DATE OF RULES (RULE 700).~~

~~The rules of this Board are hereby approved by the Board on August 19, 2005, and shall become effective on this date. (3-30-06)~~

~~701. -- 999.~~ (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES
24.27.01 – RULES OF THE IDAHO STATE BOARD OF MASSAGE THERAPY
DOCKET NO. 24-2701-1601
NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-4007, Idaho Code.

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

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 674-677](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-4008, Idaho Code.

Rule 250 lowers the original license fee and the annual license renewal fee from \$75 to \$65 and adds a temporary license and provisional permit fee of \$25.

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 fee rule, contact Mitchell Toryanski at (208) 334-3233.

DATED this 1st day of November, 2016.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P.O. Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING NOTICE WAS 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 54-4007.

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 19, 2016.

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 2016 Legislature passed House Bill 519 which authorized the Board to establish requirements for a temporary license and provisional permit. These rules establish the requirements for a temporary license and a provisional permit and set fees for each. The rules also lower the fee for an original license and annual license renewal and update the list of approved licensure examinations.

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

Rule 250 lowers the original license fee and the annual license renewal fee from \$75 to \$65 and adds a temporary license and provisional permit fee of \$25. These fees or charges are being imposed pursuant to Section 54-4008, Idaho Code.

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 proposed changes to these rules were discussed during noticed, open meetings 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:

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski 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 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-2701-1601

250. FEES.

Fees are established in accordance with Section 54-4008, Idaho Code, as follows: (3-27-13)

01. **Application Fee.** Application fee is fifty dollars (\$50). (3-27-13)
02. **Original License Fee.** Original license fee is ~~seventy~~ sixty-five dollars (~~\$75~~). ~~(3-27-13)~~()
03. **Annual Renewal Fee.** Annual renewal fee is ~~seventy~~ sixty-five dollars (~~\$75~~). ~~(3-27-13)~~()
04. **License by Endorsement Fee.** License by endorsement fee is seventy-five dollars (\$75). (3-27-13)

- ~~05.~~ **Temporary License.** Temporary license fee is twenty-five dollars (\$25). ()
- ~~06.~~ **Provisional Permit.** Provisional permit fee is twenty-five dollars (\$25). ()
- ~~057.~~ **Duplicate License Fee.** Duplicate license fee is ten dollars (\$10). (3-27-13)
- ~~068.~~ **Reinstatement Fee.** Reinstatement fee is as provided in Section 67-2614, Idaho Code. (3-24-16)
- ~~079.~~ **Examination Fee.** The fee for those examinations administered by a third party administrator shall be that fee determined by the administrator, and shall be paid directly to the administrator by the applicant. (3-27-13)
- ~~0810.~~ **Refund of Fees.** All fees are non-refundable except that, if a license is not issued, the license fee will be refunded. (3-27-13)

251. -- 299. (RESERVED)

300. REQUIREMENTS FOR ORIGINAL LICENSURE.

The Board may grant a license to an applicant for licensure who completes an application as set forth in Section 200 of these rules and meets the following general, education, and examination requirements: (3-27-13)

- 01. General.** (3-27-13)
- a.** An applicant must provide evidence of being at least eighteen (18) years of age. (3-27-13)
- b.** An applicant must certify that he/she has not been found guilty, convicted, received a withheld judgment, or suspended sentence for a felony or a crime involving moral turpitude, or if the applicant has been found guilty, convicted, received a withheld judgment, or suspended sentence for such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)
- c.** An applicant must certify that he/she has not been convicted of a crime under any municipal, state, or federal narcotic or controlled substance law, or if the applicant has been convicted of such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)
- d.** An applicant must certify that he/she or his/her license has not been subject to any disciplinary action by a regulatory entity in another state, territory or country including, but not limited to, having an application for licensure denied. If the applicant or his/her license has been subject to discipline, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)
- 02. Education.** Each applicant shall: (3-27-13)
- a.** Certify that he/she has obtained a high school diploma or the equivalent; and (3-27-13)
- b.** Present evidence satisfactory to the Board of having successfully completed an approved massage program as defined in Section 010 of these rules. (3-27-13)
- 03. Examination.** Each applicant shall also present evidence satisfactory to the Board of having successfully passed an approved examination. (3-27-13)

~~**04. Waiver of Requirements.** Until July 1, 2014, the Board may waive the requirements of Subsections 300.02 and 300.03 of these rules and issue a license to any applicant who meets one (1) of the following requirements: (3-27-13)~~

- ~~**a.** Completion of a minimum of five hundred (500) hours of supervised classroom and hands-on instruction relating to massage therapy; (3-27-13)~~
- ~~**b.** Completion of at least three hundred (300) hours of formal training in massage therapy as~~

~~determined by the Board, and has practiced massage therapy for at least five (5) hours per week on average for at least three (3) years prior to the date of application;~~ (3-27-13)

~~e. Completion of at least two hundred (200) hours of formal training in massage therapy, as determined by the Board, and has practiced massage therapy for at least five (5) hours per week on average for at least five (5) years prior to the date of application;~~ (3-27-13)

~~d. Active membership in good standing as a massage therapist for a period of at least twelve (12) months of a national professional massage association or organization that offers professional liability insurance; or~~ (3-27-13)

~~e. Successful passage of a nationally recognized competency examination in massage therapy that is approved by the Board. The passage of this exam may have occurred prior to the effective date of these rules.~~ (3-27-13)

301. -- 304. (RESERVED)

305. APPROVED EXAMINATIONS.

Approved examinations shall be the following examinations or another nationally recognized competency examination in massage therapy that is approved by the Board. (3-27-13)

01. Approved Examinations. (3-27-13)

a. Massage and Bodywork Licensing Examination (MBLEx) as administered by the Federation of State Massage Therapy Boards (FSMTB); (3-27-13)

b. National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) ~~as administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB);~~ (3-27-13)

~~e. or~~ **or** National Certification Examination for Therapeutic Massage (NCETM) as administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); ~~and if taken before February 1, 2015.~~ (3-27-13)()

~~d.c.~~ **c.** Other nationally recognized competency examinations in massage therapy that are approved by the Board. A written request for approval must be submitted to the Board together with supporting documentation as may be requested by the Board. (3-27-13)

02. Successful Passage. A passing score, or successful passage of the exam, will be determined by the entity administering the exam. (3-27-13)

03. Date of Exam. The passage of the exam may have occurred prior to the effective date of these rules. (3-27-13)

(BREAK IN CONTINUITY OF SECTIONS)

311. -- 319. (RESERVED)

320. TEMPORARY LICENSE.

01. General. Any person who has submitted to the board a complete application for licensure by examination under Section 54-4009, Idaho Code, or by endorsement under Section 54-4010, Idaho Code, together with the required fees, may apply for a temporary license to practice massage therapy while their application is being processed by the board. ()

02. Duration. An applicant will be issued only one temporary license which will be valid for a period

not to exceed four (4) months or until the board acts upon the licensure application, whichever occurs first. ()

321. -- 329. (RESERVED)

330. PROVISIONAL PERMIT.

Upon application to the board and payment of the required fees, an applicant may be issued a provisional permit to practice massage therapy if the applicant meets all the requirements for licensure under section 54-4009, Idaho Code except for having successfully passed a nationally recognized competency examination in massage therapy that is approved by the Board as described in Subsection 305.01. ()

01. General. A provisional permit will be issued subject to the following conditions: ()

a. The applicant must certify that the applicant will take the next scheduled examination for licensure approved by the board, and that the applicant has not failed two (2) previous examinations for licensure; and ()

b. A licensed massage therapist certifies to the board that the applicant will practice massage therapy only under the supervision of the licensed massage therapist while both are in the same location. ()

02. Duration and Renewal. An applicant will be issued only one provisional permit which shall be valid for a period not to exceed six (6) months or until the applicant is issued a temporary license or the board acts upon the massage therapist license application, whichever occurs first. A provisional permit may only be renewed once upon a showing of good cause. ()

3431. -- 399. (RESERVED)