

# **PENDING 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**  
**16.01.02 – EMERGENCY MEDICAL SERVICES (EMS) -- RULE DEFINITIONS**

**DOCKET NO. 16-0102-1601**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective July 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code.

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

This chapter defines EMS terminology that applies to all EMS chapters of rules. These rules updated definitions for “Recognition of Emergency Personnel Licensure Interstate Compact Act (REPLICA),” “EMS - Data Collection and Submission Requirements” and “EMS - Agency Licensing Requirements.”

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 62 through 71](#).

**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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds, or to the state general fund. This rulemaking is intended to be cost-neutral.

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

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  
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E-mail: [dhwrules@dhw.idaho.gov](mailto: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 56-1011 through 56-1023, Idaho Code.

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

**Wednesday, September 28, 2016 - 10:30 am MDT**

**Department of Health & Welfare  
Bureau of EMS Preparedness  
Boise, ID**

<b>Teleconference Call-In:</b>	<b>Webinar:</b>
<b>Dial in: 1 (562) 247-8422 Participant Code: 314-674-246</b>	<b>Participate through computer &amp; Internet audio</b> <a href="https://attendee.gotowebrinar.com/register/3403979524131150850">https://attendee.gotowebrinar.com/register/ 3403979524131150850</a> <b>PRE-REGISTRATION is required</b>

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

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

This chapter of rules defines EMS terminology that applies to all EMS chapters of rules. These rules are being updated to amend definitions to align with current practices for:

1. Recognition of Emergency Personnel Licensure Interstate Compact Act (REPLICA), adopted by the 2016 Legislature;
2. IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements," a new chapter published in this same Bulletin under Docket No. 16-0106-1601; and
3. IDAPA 16.01.03, "Emergency Medical Services (EMS) -- Agency Licensing Requirements," amendments published in this same Bulletin under Docket 16-0103-1602.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds, or to the state general fund. This rulemaking is intended to be cost-neutral.

**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 32 and 33**, under Docket No. 16-0103-1601, EMS-Agency Licensing Requirement rules.

**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 John Cramer at (208) 334-4000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0102-1601**

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.01.02, "Emergency Medical Services (EMS) -- Rule Definitions." (7-1-14)

**02. Scope.** These rules contain the definitions used throughout the Emergency Medical Services chapters of rules adopted by the Department. Those chapters include: (7-1-14)

**a.** IDAPA 16.01.01, "Emergency Medical Services (EMS) -- Advisory Committee (EMSAC)"; (7-1-14)

**b.** IDAPA 16.01.03, "Emergency Medical Services (EMS) -- Agency Licensing Requirements"; (7-1-14)

**c.** IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements"; (7-1-16)

**d.** IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements"; ( )

**e.** IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements"; and (7-1-16)

**f.** IDAPA 16.01.12, "Emergency Medical Services (EMS) -- Complaints, Investigations and Disciplinary Actions." (7-1-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH B.**

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply:

- (7-1-14)
- 01. Advanced Emergency Medical Technician (AEMT).** An AEMT is a person who: (7-1-14)
- a.** Has met the qualifications for licensure under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, "Emergency Medical Services (EMS) - Personnel Licensing Requirements"; (7-1-14)
- b.** Is licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)
- c.** Carries out the practice of emergency medical care within the scope of practice for AEMT determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; and (7-1-14)
- d.** Practices under the supervision of a physician licensed in Idaho. (7-1-14)
- 02. Advanced Life Support (ALS).** The provision of medical care, medication administration and treatment with medical devices that correspond to the knowledge and skill objectives in the Paramedic curriculum currently approved by the State Health Officer and within the scope of practice defined in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," by persons licensed as Paramedics by the Department. (7-1-14)
- 03. Advanced Practice Professional Nurse.** A person who meets all the applicable requirements and is licensed to practice as an Advanced Practice Professional Nurse under Sections 54-1401 through 54-1418, Idaho Code. (7-1-14)
- 04. Advertise.** Communication of information to the public, institutions, or to any person concerned, by any oral, written, graphic means including handbills, newspapers, television, radio, telephone directories, billboards, or electronic communication methods. (7-1-14)
- 05. Affiliation.** The formal association that exists between an agency and those licensed personnel who appear on the agency's roster, which includes active participation, collaboration, and involvement. Affiliation can be demonstrated by the credentialing of licensed personnel by the agency medical director. (7-1-14)
- 06. Affiliating EMS Agency.** The licensed EMS agency, or agencies, under which licensed personnel are authorized to provide patient care. (7-1-14)
- 07. Air Ambulance.** Any privately or publicly owned fixed wing aircraft or rotary wing aircraft used for, or intended to be used for, the transportation of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with Sections 56-1011 through 56-1023, Idaho Code, and specifications established in IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements." (7-1-14)
- 08. Air Medical Agency.** An agency licensed by the Department that responds to requests for patient care and transportation from hospitals and EMS agencies using a fixed wing aircraft or rotary wing aircraft. (7-1-14)
- 09. Air Medical ~~4~~.** A service type available to a licensed air medical EMS agency that meets the requirements in IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements." (7-1-14)( )
- ~~10~~. Air Medical Response.** The deployment of an aircraft licensed as an air ambulance to an emergency scene intended for the purpose of patient treatment and transportation. (7-1-14)
- ~~10~~1. Air Medical ~~4~~ Support.** A service type available to a licensed air medical EMS agency that meets the requirements in IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements." (7-1-14)( )



**12. Ambulance.** Any privately or publicly owned motor vehicle, or nautical vessel, used for, or intended to be used for, the transportation of sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with Sections 56-1011 through 56-1023, Idaho Code, and specifications established in IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements." (7-1-14)

**13. Ambulance-Based Clinicians.** Licensed Professional Nurses and Advanced Practice Professional Nurses who are currently licensed under Sections 54-1401 through 54-1418, Idaho Code, and Physician Assistants who are currently licensed under Sections 54-1801 through 54-1841, Idaho Code. (7-1-14)

**14. Ambulance Agency.** An agency licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements," operated with the intent to provide personnel and equipment for medical treatment at an emergency scene, during transportation or during transfer of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. (7-1-14)

**15. Applicant.** Any organization that is requesting an agency license under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements," including the following: (7-1-14)

- a.** An organization seeking a new license; (7-1-14)
- b.** An existing agency that intends to: (7-1-14)
  - i.** Change the level of licensed personnel it utilizes; (7-1-14)
  - ii.** Change its geographic coverage area (except by agency annexation); or (7-1-14)
  - iii.** Begin or discontinue providing patient transport services. (7-1-14)

**16. Assessment.** The evaluation of a patient by EMS licensed personnel intending to provide treatment or transportation to that patient. (7-1-14)

**17. Basic Life Support (BLS).** The provision of medical care, medication administration, and treatment with medical devices which correspond to the knowledge and skill objectives in the EMR or EMT curriculum currently approved by the State Health Officer and within scope of practice defined in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," by persons licensed as EMRs or EMTs by the Department. (7-1-14)

**18. Board.** The Idaho Board of Health and Welfare. (7-1-14)

**011. DEFINITIONS AND ABBREVIATIONS C THROUGH E.**

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply: (7-1-14)

**01. Call Volume.** The number of requests for service that an agency either anticipated or responded to during a designated period of time. (7-1-14)

**02. Candidate.** Any individual who is requesting an EMS personnel license under Sections 56-1011 through 56-1023, Idaho Code, IDAPA 16.01.07, "Emergency Medical Services (EMS) - Personnel Licensing Requirements." (7-1-14)

**03. Certificate of Eligibility.** Documentation that an individual is eligible for affiliation with an EMS agency, having satisfied all requirements for an EMS Personnel Licensure except for affiliation, but is not licensed to practice. (7-1-14)

**04. Certification.** A credential issued by a designated certification body for a specified period of time

indicating that minimum standards have been met. (7-1-16)

**05. Certified EMS Instructor.** An individual approved by the Department, who has met the requirements in IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements," to provide EMS education and training. (7-1-16)

**06. CoAEMSP.** Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions. (7-1-16)

**07. Cognitive Exam.** Computer-based exam to demonstrate knowledge learned during an EMS education program. (7-1-16)

**08. Compensated Volunteer.** An individual who performs a service without promise, expectation, or receipt of compensation other than payment of expenses, reasonable benefits or a nominal fee to perform such services. This individual cannot be a part-time or full-time employee of the same organization performing the same services as a volunteer and employee. (7-1-14)

**09. Conflict of Interest.** A situation in which a decision by personnel acting in their official capacity is influenced by or may be a benefit to their personal interests. (7-1-16)

**10. Consolidated Emergency Communications System.** Facilities, equipment, and dispatching services directly related to establishing, maintaining, or enhancing a 911 emergency communications service defined in Section 31-4802, Idaho Code. (7-1-16)

**11. Core Content.** Set of educational goals, explicitly taught (and not taught), focused on making sure that all students involved learn certain material tied to a specific educational topic and defines the entire domain of out-of-hospital practice and identifies the universal body of knowledge and skills for emergency medical services providers who do not function as independent practitioners. (7-1-16)

**12. Course.** The specific portions of an education program that delineate the beginning and the end of an individual's EMS education. A course is also referred to as a "section" on the NREMT website. (7-1-16)

**13. Course Physician.** A physician charged with reviewing and approving both the clinical and didactic content of a course. (7-1-16)

**14. Credentialing.** The local process by which licensed EMS personnel are authorized to provide medical care in the out-of-hospital, hospital, and medical clinic setting, including the determination of a local scope of practice. (7-1-14)

**15. Credentialed EMS Personnel.** Individuals who are authorized to provide medical care by the EMS medical director, hospital supervising physician, or medical clinic supervising physician. (7-1-14)

**16. Critical Care.** The treatment of a patient with continuous care, monitoring, medication, or procedures requiring knowledge or skills not contained within the Paramedic curriculum approved by the State Health Officer. Interventions provided by Paramedics are governed by the scope of practice defined in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." (7-1-14)

**17. Critical Care Agency.** An ambulance or air medical EMS agency that advertises and provides all of the skills and interventions defined as critical care in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." (7-1-14)

**18. Department.** The Idaho Department of Health and Welfare. (7-1-14)

**19. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (7-1-14)

**20. Division.** The Division of Public Health, Idaho Department of Health and Welfare. (7-1-14)

**21. Emergency.** A medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (7-1-14)

**22. Emergency Medical Care.** The care provided to a person suffering from a medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (7-1-14)

**23. Emergency Medical Responder (EMR).** An EMR is a person who: (7-1-14)

**a.** Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, "Emergency Medical Services - Personnel Licensing Requirements"; (7-1-14)

**b.** Is licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)

**c.** Carries out the practice of emergency medical care within the scope of practice for EMR determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; and (7-1-14)

**d.** Practices under the supervision of a physician licensed in Idaho. (7-1-14)

**24. Emergency Medical Services (EMS).** Under Section 56-1012(12), Idaho Code, emergency medical services or EMS is aid rendered by an individual or group of individuals who do the following: (4-11-15)

**a.** Respond to a perceived need for medical care in order to prevent loss of life, aggravation of physiological or psychological illness, or injury; (4-11-15)

**b.** Are prepared to provide interventions that are within the scope of practice as defined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; (4-11-15)

**c.** Use an alerting mechanism to initiate a response to requests for medical care; and (4-11-15)

**d.** Offer, advertise, or attempt to respond as described in Section 56-1012(12), (a) through (c), Idaho Code. (4-11-15)

**e.** Aid rendered by a ski patroller, as described in Section 54-1804(1)(h), Idaho Code, is not EMS. (4-11-15)

**25. Emergency Medical Services Advisory Committee (EMSAC).** The statewide advisory board of the Department as described in IDAPA 16.01.01, "Emergency Medical Services (EMS) - Advisory Committee (EMSAC)." EMSAC members are appointed by the Director of the Idaho Department of Health and Welfare to provide counsel to the Department on administering the EMS Act. (7-1-14)

~~25~~ **26. Emergency Medical Technician (EMT).** An EMT is a person who: (7-1-14)

**a.** Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, "Emergency Medical Services - Personnel Licensing Requirements"; (7-1-14)

**b.** Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)

**c.** Carries out the practice of emergency medical care within the scope of practice for EMT determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02,

“Rules of the Idaho Emergency Medical Services (EMS) Physician Commission”; and (7-1-14)

d. Practices under the supervision of a physician licensed in Idaho. (7-1-14)

~~34~~**27.** **Emergency Scene.** Any setting outside of a hospital, with the exception of the inter-facility transfer, in which the provision of EMS may take place. (7-1-14)

~~26~~**8.** **EMS Agency.** Any organization licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements,” that operates an air medical service, ambulance service, or non-transport service. (7-1-14)

~~27~~**9.** **EMS Bureau.** The Bureau of Emergency Medical Services (EMS) & Preparedness of the Idaho Department of Health and Welfare. (7-1-14)

~~28~~**30.** **EMS Education Program.** The institution or agency holding an EMS education course. (7-1-16)

~~29~~**31.** **EMS Education Program Director.** The individual responsible for an EMS educational program or programs. (7-1-16)

~~30~~**2.** **EMS Education Program Objectives.** The measurable outcome used by the program to determine student competencies. (7-1-16)

~~31~~**3.** **EMS Medical Director.** A physician who supervises the medical activities of licensed personnel affiliated with an EMS agency. (7-1-14)

~~32~~**4.** **EMS Physician Commission (EMSPC).** The Idaho Emergency Medical Services Physician Commission created under Section 56-1013A, Idaho Code, also referred to as “the Commission.” (7-1-14)

~~33~~**5.** **EMS Response.** A response to a request for assistance that would involve the medical evaluation or treatment of a patient, or both. ( )

## **012. DEFINITIONS AND ABBREVIATIONS F THROUGH N.**

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply: (7-1-14)

**01. Formative Evaluation.** Assessment, including diagnostic testing, is a range of formal and informal assessment procedures employed by teachers during the learning process. (7-1-16)

**02. Full-Time Paid Personnel.** Personnel who perform a service with the promise, expectation, or receipt of compensation for performing such services. Full-time personnel differ from part-time personnel in that full-time personnel work a more regular schedule and typically work more than thirty-five (35) hours per week. (7-1-14)

**03. Glasgow Coma Score (GCS).** A scale used to determine a patient's level of consciousness. It is a rating from three (3) to fifteen (15) of the patient's ability to open his eyes, respond verbally, and move normally. The GCS is used primarily during the examination of patients with trauma or stroke. (7-1-14)

**04. Ground Transport Time.** The total elapsed time calculated from departure of the ambulance from the scene to arrival of the ambulance at the patient destination. (7-1-14)

**05. Hospital.** A facility in Idaho licensed under Sections 39-1301 through 39-1314, Idaho Code, and defined in Section 39-1301(a)(1), Idaho Code. (7-1-14)

**06. Instructor.** Person who assists a student in the learning process and meets the requirements to obtain instructor certification. (7-1-16)

**07. Instructor Certification.** A credential issued to an individual by the Department for a specified period of time indicating that minimum standards for providing EMS instruction under IDAPA 16.01.05,

“Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements,” have been met.  
(7-1-16)

**08. Intermediate Life Support (ILS).** The provision of medical care, medication administration, and treatment with medical devices which correspond to the knowledge and skill objectives in the AEMT curriculum currently approved by the State Health Officer and within the scope of practice defined in IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission,” by persons licensed as AEMTs by the Department.  
(7-1-14)

**09. Investigation.** Research of the facts concerning a complaint or issue of non-compliance which may include performing or obtaining interviews, inspections, document review, detailed subject history, phone calls, witness statements, other evidence, and collaboration with other jurisdictions of authority.  
(7-1-14)

**10. License.** A document issued by the Department to an agency or individual authorizing specified activities and conditions as described under Sections 56-1011 through 56-1023, Idaho Code.  
(7-1-14)

**11. Licensed Personnel.** Those individuals who are licensed by the Department as Emergency Medical Responders (EMR), Emergency Medical Technicians (EMT), Advanced Emergency Medical Technicians (AEMT), and Paramedics.  
(7-1-14)

**12. Licensed Professional Nurse.** A person who meets all the applicable requirements and is licensed to practice as a Licensed Professional Nurse under Sections 54-1401 through 54-1418, Idaho Code.  
(7-1-14)

**13. Local Incident Management System.** The local system of interagency communications, command, and control established to manage emergencies or demonstrate compliance with the National Incident Management System.  
(7-1-14)

**14. Medical Supervision Plan.** The written document describing the provisions for medical supervision of licensed EMS personnel.  
(7-1-14)

**15. National Emergency Medical Services Information System (NEMSIS).** NEMSIS is the national repository used to store national EMS data. NEMSIS sets the uniform data conventions and structure for the Data Dictionary. NEMSIS collects and provides aggregate data available for analysis and research through its technical assistance center accessed at <http://www.nemsis.org>.  
( )

**156. National Registry of Emergency Medical Technicians (NREMT).** An independent, non-governmental, not for profit organization which prepares validated examinations for the state's use in evaluating candidates for licensure.  
(7-1-14)

**167. Non-transport Agency.** An agency licensed by the Department, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended to be the service that will actually transport sick or injured persons.  
(7-1-14)

**178. Non-transport Vehicle.** Any vehicle operated by an agency with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended as the vehicle that will actually transport sick or injured persons.  
(7-1-14)

**189. Nurse Practitioner.** An Advanced Practice Professional Nurse, licensed in the category of Nurse Practitioner, as defined in IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.”  
(7-1-14)

**013. DEFINITIONS AND ABBREVIATIONS O THROUGH Z.**

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply:  
(7-1-14)

**01. Optional Module.** Optional modules (OMs) are skills identified by the EMS Physician Commission that exceed the floor level Scope of Practice for EMS personnel and may be adopted by the agency medical director.  
(7-1-16)

- 02. Out-of-Hospital.** Any setting outside of a hospital, including inter-facility transfers, in which the provision of EMS may take place. (7-1-14)
- 03. Paramedic.** A paramedic is a person who: (7-1-14)
- a.** Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, "Emergency Medical Services - Personnel Licensing Requirements"; (7-1-14)
  - b.** Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)
  - c.** Carries out the practice of emergency medical care within the scope of practice for paramedic determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; and (7-1-14)
  - d.** Practices under the supervision of a physician licensed in Idaho. (7-1-14)
- 04. Paramedicine.** Providing emergency care to sick and injured patients at the advanced life support (ALS) level with defined roles and responsibilities to be credentialed at the Paramedic level. (7-1-16)
- 05. Part-Time Paid Personnel.** Personnel who perform a service with the promise, expectation, or receipt of compensation for performing such services. Part-time personnel differ from the full-time personnel in that the part-time personnel typically work an irregular schedule and work less than thirty-five (35) hours per week. (7-1-14)
- 06. Patient.** A sick, injured, incapacitated, or helpless person who is under medical care or treatment. (7-1-14)
- 07. Patient Assessment.** The evaluation of a patient by EMS licensed personnel intending to provide treatment or transportation to that patient. (7-1-14)
- 08. Patient Care.** The performance of acts or procedures under emergency conditions in responding to a perceived individual need for immediate care in order to prevent loss of life, aggravation of physiological or psychological illness, or injury. (7-1-14)
- 09. Patient Movement.** The relatively short distance transportation of a patient from an off-highway emergency scene to a rendezvous with an ambulance or air ambulance. (7-1-14)
- 10. Patient Transport.** The transportation of a patient by ambulance or air ambulance from a rendezvous or emergency scene to a medical care facility. (7-1-14)
- 11. Physician.** A person who holds a current active license in accordance with Section 54-1803, Idaho Code, issued by the State Board of Medicine to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine in Idaho and is in good standing with no restrictions upon, or actions taken against, his license. (7-1-14)
- 12. Physician Assistant.** A person who meets all the applicable requirements and is licensed to practice as a licensed physician assistant under Title 54, Chapter 18, Idaho Code. (7-1-14)
- 13. Planned Deployment.** The deliberate, planned placement of EMS personnel outside of an affiliating agency's deployment model declared on the application under which the agency is currently licensed. (7-1-14)
- 14. Prehospital.** A setting where emergency medical care is provided prior to or during transport to a hospital. (7-1-16)
- 15. Psychomotor Exam.** Practical demonstration of skills learned during an EMS education course.

(7-1-16)

**16. REPLICA.** The Recognition of EMS Personnel Licensure Interstate Compact known as REPLICA that allows recognition of EMS personnel licensed in other jurisdictions that have enacted the compact to have personnel licenses reciprocated in the state of Idaho. ( )

**167. Response Time.** The total time elapsed from when the agency receives a call for service to when the agency arrives and is available at the scene. (7-1-14)

**18. Seasonal.** An agency that is active and operational only during a period of time each year that corresponds to the seasonal activity that the agency supports. ( )

**179. Skills Proficiency.** The process overseen by an EMS agency medical director to verify competency in psychomotor skills. (7-1-14)

**1820. State Health Officer.** The Administrator of the Division of Public Health. (7-1-14)

**1921. Summative Evaluation.** End of topic or end of course evaluation that covers both didactic and practical skills application. (7-1-16)

**202. Supervision.** The medical direction by a licensed physician of activities provided by licensed personnel affiliated with a licensed ambulance, air medical, or non-transport service, including: (7-1-14)

- a. Establishing standing orders and protocols; (7-1-14)
- b. Reviewing performance of licensed personnel; (7-1-14)
- c. Providing instructions for patient care via radio or telephone; and (7-1-14)
- d. Other oversight. (7-1-14)

**213. Third Service.** A public EMS agency that is neither law-enforcement nor fire-department based. (7-1-14)

**224. Transfer.** The transportation of a patient from one (1) medical care facility to another. (7-1-14)

**235. Uncompensated Volunteer.** An individual who performs a service without promise, expectation, or receipt of any compensation for the services rendered. An uncompensated volunteer cannot be a part-time or full-time employee of the same organization performing the same services as a volunteer and employee. (7-1-14)

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

### **16.01.03 – EMERGENCY MEDICAL SERVICES (EMS) -- AGENCY LICENSING REQUIREMENTS**

**DOCKET NO. 16-0103-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective July 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code.

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

Requirements for data collection and submission by licensed EMS Agencies are being deleted from this rule chapter.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 72 through 74](#).

**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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds, or to the state general fund. This rulemaking is intended to be cost-neutral.

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

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](mailto: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 56-1011 through 56-1023, Idaho Code,

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

**Wednesday, September 28, 2016 - 10:30 am MDT**

**Department of Health & Welfare**  
**Bureau of EMS Preparedness**  
**Boise, ID**

<b>Teleconference Call-In:</b>	<b>Webinar:</b>
<b>Dial in: 1 (562) 247-8422</b> <b>Participant Code: 314-674-246</b>	<b>Participate through computer &amp; Internet audio</b> <a href="https://attendee.gotowebinar.com/register/3403979524131150850">https://attendee.gotowebinar.com/register/ 3403979524131150850</a> <b>PRE-REGISTRATION is required</b>

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

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

Currently, requirements for data collection and submission by licensed EMS Agencies are found in this rule chapter. Those requirements are being removed from this chapter and a new chapter of rule is being written and published in this same Bulletin in IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements," under Docket No. 16-0106-1601.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

**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 32 and 33**, under Docket No. 16-0103-1601, EMS-Agency Licensing Requirement rules.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0103-1601

**535. EMS AGENCY -- RECORDS, DATA COLLECTION, AND SUBMISSION REQUIREMENTS.**

Each EMS agency must comply with the following records, data collection, and submission requirements under IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements." (7-1-16)( )

~~01. Records to be Maintained by Ambulance and Air Medical Agencies. Each EMS ambulance and air medical agency must maintain records of each ambulance and air ambulance response and submit them to the EMS Bureau at least quarterly in a form approved by the EMS Bureau. These records must include at least the following information:~~ (7-1-16)

- ~~a. Name of ambulance service;~~ (7-1-16)
- ~~b. Date of response;~~ (7-1-16)
- ~~c. Time call received;~~ (7-1-16)
- ~~d. Time en route to scene;~~ (7-1-16)
- ~~e. Time arrival at scene;~~ (7-1-16)
- ~~f. Time service departed scene;~~ (7-1-16)
- ~~g. Time arrival at hospital;~~ (7-1-16)
- ~~h. Location of incident;~~ (7-1-16)
- ~~i. Description of illness/injury;~~ (7-1-16)
- ~~j. Description of patient management;~~ (7-1-16)
- ~~k. Patient destination;~~ (7-1-16)
- ~~l. Ambulance unit identification;~~ (7-1-16)
- ~~m. Identification and licensure level of each ambulance crew member on the response; and~~ (7-1-16)
- ~~n. Response outcome.~~ (7-1-16)

~~02. **Records to Be Maintained by Non-Transport Agencies.** Each non-transport agency must maintain records of each EMS response in a form approved by the EMS Bureau. Each applicant non-transport services agency who submits an application to the EMS Bureau after July 1, 2009, must submit records of each EMS response to the EMS Bureau at least quarterly in a form approved by the EMS Bureau. These records must include at least the following information:~~ (7-1-16)

- ~~a. Identification of non-transport service;~~ (7-1-16)
- ~~b. Date of response;~~ (7-1-16)
- ~~c. Time call received;~~ (7-1-16)
- ~~d. Time en route to scene;~~ (7-1-16)
- ~~e. Time arrival at scene;~~ (7-1-16)
- ~~f. Time service departed scene;~~ (7-1-16)
- ~~g. Location of incident;~~ (7-1-16)
- ~~h. Description of illness/injury;~~ (7-1-16)
- ~~i. Description of patient management;~~ (7-1-16)
- ~~j. Patient destination;~~ (7-1-16)
- ~~k. Identification and licensure level of non-transport service personnel on response; and~~ (7-1-16)
- ~~l. Response outcome.~~ (7-1-16)

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

### **16.01.03 – EMERGENCY MEDICAL SERVICES (EMS) -- AGENCY LICENSING REQUIREMENTS**

**DOCKET NO. 16-0103-1602**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code.

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

These rules were adopted as temporary rules to add seasonal operations, hospital and air medical support licensure, as well as updating the “Minimum Equipment Standards for Licensed EMS Services,” Edition 2016-1 incorporated in these rules. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 75 through 79](#).

**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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds, or to the state general fund. This rulemaking is intended to be cost-neutral.

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

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](mailto: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 August 18, 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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code.

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

**Wednesday, September 28, 2016 - 10:30 am MDT**

**Department of Health and Welfare  
Bureau of EMS Preparedness  
Boise, ID**

<b>Teleconference Call-In:</b>	<b>Webinar:</b>
<b>Dial in: 1 (562) 247-8422 Participant Code: 314-674-246</b>	<b>Participate through computer and Internet audio</b> <a href="https://attendee.gotowebinar.com/register/3403979524131150850">https://attendee.gotowebinar.com/register/ 3403979524131150850</a> <b>PRE-REGISTRATION is required</b>

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

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

The Department has received applications for EMS agency licensure for seasonal EMS agencies and from hospitals. The addition of an operational declaration for a hospital agency licensure will allow this service type to be licensed in Idaho. Seasonal duration for an EMS Agency is being added to allow an agency to license in a seasonal capacity. Also, changes are made for licensure requirements around EMS Air Medical Support. The amendments to these rules provide for these important emergency medical services in Idaho. The "Minimum Equipment Standards for Licensed EMS Services" is being updated and incorporated into these rules to give it the force and effect of law.

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

The EMS Agency rules do not contain language for an EMS agency to operate seasonally nor allow a hospital emergency department to obtain EMS agency licensure. Air medical support rules for agency licensure also need to be updated for this service. These temporary rules are needed to allow these types of licensures to become effective to as soon as possible to protect the public health, safety or welfare.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because the rule is temporary and needed to be in place to protect the public health, safety or welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, "Minimum Equipment Standards for Licensed EMS Services, Edition 2016-1," is being incorporated by reference into these rules to give it the force and effect of law. The document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication. The document may be found online at <http://www.idahoems.org>.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 18th Day of August, 2016

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0103-1602**

**004. INCORPORATION BY REFERENCE.**

The Board of Health and Welfare has adopted the "Minimum Equipment Standards for Licensed EMS Services," edition 201~~4~~<sup>6</sup>, version 1.0, as its standard for minimum equipment requirements for licensed EMS Agencies and incorporates it by reference. Copies of these standards may be obtained from the Department, as described in Section 005 of these rules, or online at: <http://www.idahoems.org>. ~~(7-1-14)~~(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. EMS AGENCY -- SERVICE TYPES.**

An EMS agency may be licensed as one (1) or more service types. An agency that provides multiple service types must meet the minimum requirements for each service type provided. The following are the agency services types available for EMS agency licensure. (7-1-14)

- 01. Ground Agency Service Types.** (7-1-14)
  - a.** Non-transport. (7-1-14)
  - b.** Ambulance. (7-1-14)
- 02. Air Medical Agency Service Types.** (7-1-14)
  - a.** Air Medical ~~7~~. ~~(7-1-14)~~(    )

- b. Air Medical ~~#~~ Support. (7-1-14)( )

**202. EMS AGENCY -- CLINICAL LEVELS.**

An EMS agency is licensed at one (1) or more of the following clinical levels depending on the agency's highest level of licensed personnel and life support services advertised or offered. (7-1-14)

- 01. Non-transport.** (7-1-14)

- a. EMR/BLS; (7-1-14)

- b. EMT/BLS; (7-1-14)

- c. AEMT/ILS; or (7-1-14)

- d. Paramedic/ALS. (7-1-14)

- 02. Ambulance.** (7-1-14)

- a. EMT/BLS; (7-1-14)

- b. AEMT/ILS; (7-1-14)

- c. Paramedic/ALS; or (7-1-14)

- d. Paramedic/ALS Critical Care. (7-1-14)

- 03. Air Medical ~~#~~.** (7-1-14)( )

- a. Paramedic/ALS; or (7-1-14)

- b. Paramedic/ALS Critical Care. (7-1-14)

- 04. Air Medical ~~#~~ Support.** (7-1-14)( )

- a. EMT/BLS; ~~or~~ (7-1-14)( )

- b. AEMT/ILS; ~~or~~ (7-1-14)( )

- c. Paramedic/ALS. ( )

**203. EMS AGENCY -- LICENSE DURATION.**

Each EMS agency must identify the license duration for each license type. License durations are: (7-1-14)

**01. Ongoing.** The agency is licensed to provide EMS personnel and equipment for an ongoing period of time and plans to renew its license on an annual basis. (7-1-14)

**02. Limited.** The agency is licensed to provide EMS personnel and equipment for the duration of a specific event or a specified period of time with no expectation of renewing the agency license. (7-1-14)

**03. Seasonal.** The agency is licensed to provide EMS personnel and equipment for the duration of time each year that corresponds to the seasonal activity that the agency supports. ( )

**204. GROUND EMS AGENCY -- OPERATIONAL DECLARATIONS.**

An agency providing ground services is licensed with one (1) or more of the following operational declarations depending on the services that the agency advertises or offers. (7-1-14)

- 01. Prehospital.** The prehospital operational declaration is available to an agency that: (7-1-16)
- a.** Has primary responsibility for responding to calls for EMS within their designated geographic coverage area; and (7-1-16)
  - b.** Is dispatched to prehospital emergency medical calls by a consolidated emergency communications system. (7-1-16)
- 02. Prehospital Support.** The prehospital support operational declaration is available to an agency that: (7-1-16)
- a.** Provides support under agreement to a prehospital agency having primary responsibility for responding to calls for EMS within a designated geographic coverage area; and (7-1-16)
  - b.** Is dispatched to prehospital emergency medical calls by a consolidated emergency communications system. (7-1-16)
- 03. Community Health EMS.** The community health EMS operational declaration is available to an agency with a prehospital operational declaration or prehospital support operational declaration that provides personnel and equipment for medical assessment and treatment at a non-emergency scene or at the direction of a physician or independent practitioner. (7-1-16)
- 04. Transfer.** The transfer operational declaration is available to an ambulance agency that provides EMS personnel and equipment for the transportation of patients from one (1) medical care facility in their designated geographic coverage area to another. An agency with this operational declaration must declare which sending facilities it routinely responds to if requested. (7-1-14)
- 05. Standby.** The standby operational declaration is available to an agency that provides EMS personnel and equipment to be staged at prearranged events within their designated geographic coverage area. (7-1-14)
- 06. Non-Public.** The non-public operational declaration is available to an agency that provides EMS personnel and equipment intended to treat patients who are employed or contracted by the license holder. An agency with a non-public operational declaration is not intended to treat members of the general public. A non-public agency must maintain written plans for patient treatment and transportation. (7-1-14)
- 07. Hospital.** The hospital operational declaration is available to an agency whose primary responsibility is hospital or clinic activity and utilizes licensed EMS personnel in its facility to assist with patient care and movement. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

- 211. AIR MEDICAL EMS AGENCY -- PATIENT TRANSPORT ~~OR~~, TRANSFER, OR SUPPORT.**  
An agency that is licensed with an air medical service type is intended for patient transport ~~or~~, transfer, or support. (7-1-14)( )
- 01. Transport.** An air medical agency that provides the operational declaration of air medical transport may provide transportation of patients from a rendezvous or emergency scene to a medical care facility. (7-1-14)
- 02. Transfer.** An air medical agency that provides the operational declaration of air medical transfer can provide transportation of patients from one (1) medical care facility within their designated geographic coverage area to another. (7-1-14)
- 03. Support.** An air medical agency that provides the operational declaration of air medical support



can provide patient movement from a remote area or scene to a rendezvous point where care will be transferred to another licensed air medical or ground transport service for transport to definitive care. An air medical support agency must report all patient movement events to the Department within thirty (30) days of the event. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**302. AIR MEDICAL EMS AGENCY -- PERSONNEL REQUIREMENTS.**

Each air medical agency must ensure that there are two (2) crew members, not including the pilot, on each patient transport or transfer. The crew member providing patient care, at a minimum, must be a licensed EMT. An air medical agency must also demonstrate that the following exists. (7-1-14)

**01. Personnel for Air Medical ~~I~~ Agency.** An Air Medical ~~I~~ agency must ensure that each flight includes at a minimum, one (1) licensed professional nurse and one (1) Paramedic. Based on the patient's need, an exception for transfer flights may include a minimum of one (1) licensed respiratory therapist and one (1) licensed professional nurse, or two (2) licensed professional nurses. ~~(7-1-14)~~( )

**02. Personnel for Air Medical ~~H~~ Support Agency.** An Air Medical ~~H~~ Support agency must ensure that each flight includes at a minimum, two (2) ~~licensed patient care providers~~ crew members with one (1) patient care provider licensed at or above the agency's highest clinical level of licensure. ~~(7-1-14)~~( )

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

### **16.01.06 – EMERGENCY MEDICAL SERVICES (EMS) -- DATA COLLECTION AND SUBMISSION REQUIREMENTS**

#### **DOCKET NO. 16-0106-1601 (NEW CHAPTER)**

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code.

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

This new chapter of rules implements and provides requirements for the collection and submission of data by licensed EMS Agencies throughout the state. These rules incorporate by reference a standards manual that provides the data elements required for reporting.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 80 through 84](#).

**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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds, or to the state general fund. This rulemaking is intended to be cost-neutral.

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

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](mailto: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 56-1011 through 56-1023, Idaho Code,

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

**Wednesday, September 28, 2016 - 10:30 am MDT**

**Department of Health & Welfare  
Bureau of EMS Preparedness  
Boise, ID**

<b>Teleconference Call-In:</b>	<b>Webinar:</b>
<b>Dial in: 1 (562) 247-8422 Participant Code: 314-674-246</b>	<b>Participate through computer &amp; Internet audio</b> <a href="https://attendee.gotowebinar.com/register/3403979524131150850">https://attendee.gotowebinar.com/register/ 3403979524131150850</a> <b>PRE-REGISTRATION is required</b>

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

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

This new chapter of rules is being written to implement and provide for the collection and submission of data by licensed EMS Agencies to provide needed information concerning data collected by Emergency Medical Services throughout the state. These requirements will provide valuable information to help the state make informed decisions on what types of EMS services are needed to protect the health, safety or welfare of Idahoans and others within the state. These rules incorporate by reference a standards manual that provides the data elements that will be required for reporting.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

**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 32 and 33**, under Docket No. 16-0103-1601, EMS-Agency Licensing Requirements.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, “The EMS Data Collection Standards Manual, Edition 2017-1,” is being incorporated by reference into these rules to give it the force and effect of law. The document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication. The document may be found online at <http://www.idahoems.org/>.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0106-1601**

**IDAPA 16**  
**TITLE 01**  
**CHAPTER 06**

**16.01.06 - EMERGENCY MEDICAL SERVICES (EMS) --**  
**DATA COLLECTION AND SUBMISSION REQUIREMENTS**

**000. LEGAL AUTHORITY.**

The Idaho Board of Health and Welfare is authorized under Section 56-1023, Idaho Code, to adopt rules and standards concerning the administration of the Idaho Emergency Medical Services Act, Sections 56-1011 through 56-1023, Idaho Code. The Director is authorized under Section 56-1003, Idaho Code, to supervise and administer an emergency medical services program. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.01.06, “Emergency Medical Services (EMS) -- Data Collection and Submission Requirements.” ( )

**02. Scope.** These rules contain the requirements for licensed EMS agencies to collect and report essential data information related to the performance, needs, and assessments of the statewide emergency medical services system. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department may have written statements that pertain to the interpretation of this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” ( )

**004. INCORPORATION BY REFERENCE.**

The EMS Data Collection Standards Manual, Edition 2017-1, is incorporated by reference in this chapter of rules. Copies of the manual may be obtained online at <http://www.idahoems.org/> or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249. ( )

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

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

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

**03. Street Address.** ( )

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

**b.** The Bureau of Emergency Medical Services and Preparedness is located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249. ( )

**04. Telephone.** ( )

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

**b.** The telephone number for the Bureau of Emergency Medical Services and Preparedness is (208) 334-4000. The toll-free phone number is 1 (877) 554-3367. ( )

**05. Internet Websites.** ( )

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

**b.** The Bureau of Emergency Medical Services and Preparedness internet website is found at <http://www.idahoems.org>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

**01. Confidentiality of Records.** ( )

**a.** Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

**b.** EMS Response records and data collected or otherwise captured by the Bureau of Emergency Medical Services and Preparedness, its agents, or designees, will be deemed to be confidential and released in accordance with applicable Department policies and applicable state and federal laws. ( )

**02. Public Records Act.** The Department will comply with Title 74, Chapter 1, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

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

**010. DEFINITIONS.**

**01. EMS Definitions.** For the purposes of this chapter, the definitions in IDAPA 16.01.02, "Emergency

Medical Services (EMS) - Rule Definitions,” apply. ( )

**02. NEMSIS Data Dictionary.** For the purposes of this chapter, definitions in the NEMSIS Data Dictionary apply. The NEMSIS website is at <http://www.nemsis.org>. ( )

**011. -- 074. (RESERVED)**

**075. INVESTIGATION OF COMPLAINTS FOR EMS DATA COLLECTION OR SUBMISSION VIOLATIONS.**

Investigation of complaints and disciplinary actions for EMS data collection and submission requirement violations are provided under IDAPA 16.01.12, “Emergency Medical Services (EMS) - Complaints, Investigations, and Disciplinary Actions.” ( )

**076. ADMINISTRATIVE LICENSE OR CERTIFICATION ACTION.**

Any license or certification may be suspended, revoked, denied, or retained with conditions for noncompliance with any standard or rule. Administrative license or certification actions, including fines, imposed by the EMS Bureau for any action, conduct, or failure to act that is inconsistent with the professionalism, or standards, or both, are provided under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.12, “Emergency Medical Services (EMS) - Complaints, Investigations, and Disciplinary Actions.” ( )

**077. -- 099. (RESERVED)**

**100. EACH EMS AGENCY MUST COMPLY WITH THE FOLLOWING RECORDS, DATA COLLECTION, AND SUBMISSION REQUIREMENTS.**

Each licensed EMS agency must collect and submit EMS response records to the EMS Bureau using the Idaho Prehospital Electronic Record Collections System known as PERCS. ( )

**01. Records to be Maintained.** Each licensed EMS agency must maintain a record that includes a Patient Care Report completed for each EMS Response. ( )

**02. Records to be Submitted.** Each licensed EMS Agency must ensure that an accurate and complete electronic Patient Care Report (ePCR) is submitted to the EMS Bureau using approved and validated software in a format determined by the Department. ( )

**03. Time Frame for Submitting Records.** Each licensed EMS agency must submit each month’s data to the Department by the 15th of the following month in a format determined by the Department. ( )

**101. -- 104. (RESERVED)**

**105. EMS RESPONSE RECORDS AND DATA COLLECTED.**

EMS response records and data collected from licensed EMS agencies or otherwise captured by the EMS Bureau, its agents, or designees, are deemed to be confidential and can only be released in accordance with applicable Department policies, state and federal laws, and this chapter of rules. ( )

**106. -- 109. (RESERVED)**

**110. USE OF SUBMITTED RECORDS AND DATA.**

Records and data submitted to the Department, may be used by Department staff and staff or other designated agencies in the performance of its regulatory duties. ( )

**01. Data Reports.** Data may be compiled into reports by a licensed emergency medical service agency from the respective agency's collected records. ( )

**02. Patient Care Reports.** Aggregate patient care report data may be released to the public in a format reasonably calculated to not disclose the identity of the individual patient. ( )

**111. -- 199. (RESERVED)**

**200. DATA TO BE REPORTED.**

The required data and information on an EMS Response is based on the definitions and structure of National Emergency Medical Services Information System (NEMSIS). NEMSIS defined data points to be reported to the Department for each EMS Response are provided in the “EMS Data Collection Standards Manual,” incorporated by reference in Section 004 of these rules. ( )

**201. -- 999. (RESERVED)**

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

### **16.01.07 – EMERGENCY MEDICAL SERVICES (EMS) -- PERSONNEL LICENSING REQUIREMENTS**

**DOCKET NO. 16-0107-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code, and Senate Bill 1281 (2016), including Sections 56-1013B through 56-1013Q, Idaho Code.

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

The 2016 Legislature adopted the Recognition of EMS Personnel Licensure Interstate Compact (REPLICA). These rule changes will allow EMS personnel from other states who have met the requirements under REPLICA to become licensed in Idaho.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 85 through 89](#).

**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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

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

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](mailto: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 56-1011 through 56-1023, Idaho Code, and Senate Bill 1281 (2016), including Sections 56-1013B through 56-1013Q, Idaho Code.

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

**Wednesday, September 28, 2016 - 10:30 am MDT**

**Department of Health and Welfare  
Bureau of EMS Preparedness  
Boise, ID**

<b>Teleconference Call-In:</b>	<b>Webinar:</b>
<b>Dial in: 1 (562) 247-8422 Participant Code: 314-674-246</b>	<b>Participate through computer &amp; Internet audio</b> <a href="https://attendee.gotowebinar.com/register/3403979524131150850">https://attendee.gotowebinar.com/register/ 3403979524131150850</a> <b>PRE-REGISTRATION is required</b>

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

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

The 2016 Legislature adopted the Recognition of EMS Personnel Licensure Interstate Compact Act (REPLICA). These rule changes will allow EMS personnel from other states who have met the requirements under REPLICA to become licensed in Idaho.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is being done simply to align the chapter with SB 1281 passed by the 2016 Idaho Legislature. These changes will allow reciprocity for EMS personnel licensed in other states that have adopted REPLICA.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0107-1601

102. ~~104.~~ (RESERVED)

**103. RECOGNITION OF EMS PERSONNEL LICENSURE INTERSTATE COMPACT (REPLICA).**

**01. Licensed EMS Personnel from a REPLICA State.** Licensed EMS personnel from a REPLICA state whose primary affiliation is an Idaho-licensed EMS agency must apply for Idaho EMS licensure within ninety (90) days of affiliation with an Idaho EMS agency. ( )

**02. Out-of-State Primary Affiliation.** If EMS personnel licensed in another REPLICA state and they claim an EMS agency in that state as their primary affiliation, Idaho licensure is not required. ( )

**104. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**115. EMS PERSONNEL LICENSE DURATION.**

Duration of a personnel license is determined using the following specified time intervals. (3-29-12)

**01. Initial License Duration for EMR and EMT Level Licensure.** EMR and EMT personnel licenses expire on March 31 or September 30. Expiration dates for EMR and EMT initial licenses are set for not less than thirty-six (36) months and not more than forty-two (42) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. (3-29-12)

**02. Initial License Duration for AEMT and Paramedic Level Licensure.** AEMT and Paramedic personnel licenses expire on March 31 or September 30. Expiration dates for AEMT and Paramedic initial licenses are set for not less than twenty-four (24) months and not more than thirty (30) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. (3-29-12)

**03. EMS Personnel License Renewal Duration for EMR and EMT Level Licensure.** An EMR and EMT level personnel license is renewed for three (3) years. (3-29-12)

**04. EMS Personnel License Renewal Duration for AEMT and Paramedic Level Licensure.** An AEMT and Paramedic level personnel license is renewed for two (2) years. (3-29-12)

**05. EMS REPLICA Licensure Duration.** EMS personnel from another REPLICA state who become licensed in Idaho will have their Idaho EMS license expire March 31 or September 30 following the expiration of their EMS license from the original state. ( )

**116. PERSONNEL LICENSE TRANSITION.**

~~Between the years of 2011 and 2017, the scope of practice and the accompanying license levels for EMS personnel will change. The scope of practice for licensed EMS personnel is provided in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." Personnel licensed at the AEMT level can opt to either transition to the AEMT-2011 level, or they may remain at the AEMT-1985 level. In order to renew a license, personnel licensed at the EMR, EMT, or Paramedic level must transition and meet the following requirements:~~ (7-1-16)( )

~~01. General Transition Requirements for Licensed Personnel. Licensed personnel transitioning to a new licensure level must:~~ (3-29-12)

- ~~a. Successfully complete an Idaho approved transition course appropriate for the level of licensure;~~ (3-29-12)
- ~~b. Provide documentation of verification by the course physician of competency in the knowledge and skills identified in the appropriate transition course curriculum; and~~ (3-29-12)
- ~~c. Include proof of completion of transition requirements with the license renewal application. All other license renewal requirements listed in Section 120 of these rules must be completed. The transition course may be counted towards the renewal continuing education requirements.~~ (3-29-12)

~~02. Application Deadlines for Transition of Licensed Personnel. Licensed personnel who choose to transition must submit an "EMS Personnel License Transition Application" according to the following deadline dates:~~ (3-29-12)

- ~~a. For personnel licensed at the EMR and EMT levels, an application for transition must be submitted after January 1, 2012, and before March 31, 2017, according to the effective date of the initial license or renewal date provided in the table below:~~

Table 116.02.a: PERSONNEL LICENSED AT EMR AND EMT LEVELS—TRANSITION DEADLINE DATES	
Effective Date of Renewed License	Date Transition Requirements MUST be Completed
October 1, 2013	September 30, 2016
April 1, 2014	March 31, 2017

(7-1-16)

~~03. Early Transition of Licensed Personnel. Licensed personnel who meet all transition requirements and choose to transition prior to their license renewal date will be issued a license as follows:~~ (3-29-12)

- ~~a. Continuing education completed between the effective date of the pre transition license and the expiration date of the transitioned license may be used to meet requirements listed in Section 120 of these rules for renewal of the transition license;~~ (3-29-12)
- ~~b. The new license will have the same expiration date as the current license; and~~ (3-29-12)
- ~~c. The new license will have a new effective date, based on the date the transition was approved by the EMS Bureau.~~ (3-29-12)

117. ~~119.~~ (RESERVED)

**118. REPLICA EXPIRATION.**  
EMS personnel from another REPLICA state who become licensed in Idaho will have their Idaho license expire in March or September following the expiration of their license in the original state. ( )

**119. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**131. REINSTATEMENT OF A LAPSED EMS PERSONNEL LICENSE.**

An individual desiring to reinstate a lapsed personnel license must provide documentation that he meets the following requirements: (3-29-12)

**01. Declaration of Previous Applications and Licensures.** A reinstatement candidate must declare each state or jurisdiction in which he has applied for, been denied, or held an EMS license or certification. (3-29-12)

**02. Authorization for Release of Information.** A reinstatement candidate must provide authorization for the EMS authority in other states or jurisdictions to release the candidate's registration, licensure, and certification information to the Idaho EMS Bureau. (3-29-12)

**03. Provide Current Affiliation with EMS Agency.** A reinstatement candidate must declare all organizations in which they are allowed to practice as licensed personnel. The candidate must have a current affiliation with a licensed EMS agency that functions at, or above, the level of licensure being sought by the candidate. (3-29-12)

**04. Documentation of Continuing Education for Lapsed License Reinstatement.** A candidate for reinstatement of a lapsed license must provide documentation of continuing education consistent with the license holder's lapsed license. Continuing education requirements are provided in Sections 300 through 325 of these rules. The time frame for meeting the continuing education requirements for reinstatement are as follows: (7-1-16)

**a.** The candidate must meet continuing education requirements under Sections 320 through 325 of these rules for the last valid licensure cycle; and (7-1-16)

**b.** Additional continuing education hours in any combination of categories and venues, proportionate to the amount of time since the expiration date of the lapsed license, as follows: (3-29-12)

i. EMR -- Three-quarters (3/4) of one (1) hour of continuing education per month of lapsed time. (3-29-12)

ii. EMT -- One and one-half (1 ½) hours of continuing education per month of lapsed time. (3-29-12)

iii. AEMT -- Two and one-quarter (2 ¼) hours of continuing education per month of lapsed time. (3-29-12)

iv. Paramedic -- Three (3) hours of continuing education per month of lapsed time. (3-29-12)

**05. Valid Identification for Reinstatement of Lapsed License.** A reinstatement candidate must have a valid state driver's license, an Idaho identification card which is issued by a county driver's license examining station, or identification card issued by the Armed Forces of the United States. (3-29-12)

**06. Criminal History and Background Check for Reinstatement of Lapsed License.** A reinstatement candidate must successfully complete a criminal background check under the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under IDAPA 16.05.06 will result in denial of reinstatement of licensure. (3-29-12)

**07. Pass Standardized Examination for Reinstatement.** A reinstatement candidate must successfully complete the standardized examination for the lapsed level of licensure required under IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements." A candidate for reinstatement must successfully complete the standardized examination within the time period during which the license was lapsed. (7-1-16)

**08. Standardized Exam Attempts For Reinstatement.** A candidate for licensure reinstatement is allowed to attempt to successfully pass the standardized exam as follows: (3-29-12)

**a.** An EMR candidate is allowed three (3) attempts to pass the exam, after which the initial EMR course must be successfully completed again before another three (3) attempts are allowed. (3-29-12)

**b.** An EMT candidate is allowed three (3) attempts to pass the exam, after which twenty-four (24) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

**c.** An AEMT candidate is allowed three (3) attempts to pass the exam, after which thirty-six (36) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

**d.** A Paramedic candidate is allowed three (3) attempts to pass the exam, after which forty-eight (48) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

**09. Submit Required Licensure Fee for Reinstatement.** A candidate must submit the applicable reinstatement license fee provided in Section 111 of these rules. A candidate for reinstatement of an EMR or EMT level of licensure has no fee requirement. (3-29-12)

**10. Expiration Date of a Reinstated License.** The expiration date for a lapsed license that is reinstated is determined as provided in Section 115 of these rules. (3-29-12)

~~**11. Reinstatement During Transition.** A candidate may reinstate his lapsed license only if he has completed transition requirements for his level of licensure. Education obtained in a transition course may be used to meet the CEU requirements for reinstatement according to Section 300 of these rules. (3-29-12)~~

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

### **16.02.01 – RULES OF THE IDAHO TIME SENSITIVE EMERGENCY SYSTEM COUNCIL**

**DOCKET NO. 16-0201-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective July 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1024 through 56-1030, Idaho Code.

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

These rules incorporate by reference a standards manual that is being updated.

There are no changes to the pending 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 433 and 434.**

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

This rulemaking has no anticipated fiscal impact to state general funds or any other funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Christian Surjan at (208) 334-6564.

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](mailto: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 56-1024 through 56-1030, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing 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 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 TSE Council is revising the TSE Standards Manual with non-substantive changes that will better meet the needs for designation levels of trauma, stroke, and STEMI facilities who voluntarily apply for a TSE designation. These rules update the incorporated document to the revised "TSE Standards Manual," Edition 2017-1, that will be become effective July 1, 2017 along with these rules.

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

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

This rulemaking has no anticipated fiscal impact to state general funds or any other funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department deemed it was not feasible. The content to the proposed rule updates the current Time Sensitive Emergency System Standards Manual, Edition 2016-1, in the rules. Extensive input is received from stakeholders at the monthly TSE Council meetings with agendas and minutes posted to the TSE website.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the "Time Sensitive Emergency System Standards Manual," Edition 2017-1, is being incorporated to give it the force and effect of law. The current incorporated document is being updated from Edition 2016-1 to the revised Edition 2017-1.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christian Surjan, at (208) 334-6564.

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 30th day of August, 2016.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0201-1601**

**004. INCORPORATION BY REFERENCE.**

The Time Sensitive Emergency System Standards Manual, Edition 2016~~6~~7-1, is incorporated by reference in this chapter of rules. Copies of the manual may be obtained online at [www.tse.idaho.gov](http://www.tse.idaho.gov) or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249.

~~(3-24-16)~~ ( )

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.02.02 – RULES OF THE IDAHO EMERGENCY MEDICAL SERVICES**  
**(EMS) PHYSICIAN COMMISSION**

**DOCKET NO. 16-0202-1601**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective July 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

This rulemaking revises the EMS Physician Commission Standards Manual, which is incorporated by reference in this chapter of rules. Updating the incorporation by reference ensures that the most recent standards are the enforceable standards and have the force and effect of law.

There are no changes to the pending 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 435 and 436](#).

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

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

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

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](mailto: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 56-1013A and 56-1023, Idaho Code.

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

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

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the content of the proposed updates to the EMS Physician Commission Standards Manual already represents extensive input from stakeholders gathered on an ongoing basis throughout the year and at the quarterly meetings of the EMS Physician Commission.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2017-1, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request from Idaho EMS. Once the docket has been finalized and adopted, the manual will be available online at: [www.emspc.dhw.idaho.gov](http://www.emspc.dhw.idaho.gov).

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

**LSO Rules Analysis Memo**

<p><b>THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0202-1601</b></p>
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**004. INCORPORATION BY REFERENCE.**

The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 201~~6~~<sup>7</sup>-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the Internet at [www.emspc.dhw.idaho.gov](http://www.emspc.dhw.idaho.gov) or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID, 83712-8249, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036. ~~(7-1-16)~~ ( )

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

### **16.02.19 – FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS (THE IDAHO FOOD CODE)**

**DOCKET NO. 16-0219-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 37-121 and 39-1603, Idaho Code.

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

The Idaho Food Code rules were amended to update the terminology used during inspections of retail food establishments by adding definitions of “risk factor” and “good retail practices.” Based on comments received, a small change is being made to remove the word “violations” from the definition of “good retail practices.”

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 90 through 94](#).

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

There is no anticipated fiscal impact to state general funds or any other funds due to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Patrick Guzzle at (208) 334-5936.

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](mailto: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 37-121 and 39-1603, Idaho Code.

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

**Thursday, September 15, 2016 - 1:30 pm (Local Time)**

**Department of Health & Welfare  
450 W. State Street  
4th Floor Conference Room  
Boise, ID**

**Via Teleconference Call-In**

**Toll Free: 1-877-820-7831  
Participant Code: 738839**

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

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

The Idaho Food Code rules are being amended to update the terminology used during inspections of retail food establishments by adding definitions of “risk factor” and “good retail practices.” The inspection process for scoring for food safety practices during an inspection is also being updated to reflect the added terminology.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

There is no anticipated fiscal impact to state general funds or any other funds due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted nor feasible because the changes being made are of a simple nature to add clarification for food safety inspectors when making on-site inspections.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, no materials are being incorporated by reference into these rules with this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Patrick Guzzle, at (208) 334-5936.

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**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0219-1601**

**110. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.**

The definitions defined in this section are modifications or additions to the definitions and terms provided in the 2013 Food Code. (7-1-16)

**01. Agricultural Market.** Any venue where a fixed or mobile retail food establishment can engage in the sale of raw or fresh fruits, vegetables, and nuts in the shell. It may also include the sale of factory sealed non-time/temperature control for safety foods (non-TCS). Agricultural market means the same as “farmers market” or “roadside stand.” (7-1-16)

**02. Board.** The State of Idaho Board of Health and Welfare as established in Section 56-1005, Idaho Code. (4-6-05)

**03. Commissary.** A commissary is a place where food containers or supplies are stored, prepared, or packaged for transit, sale, or service at other locations. (7-1-16)

**04. Consent Order.** A consent order is an enforceable agreement between the regulatory authority and the license holder to correct violations that caused the actions taken by the regulatory authority. (4-6-05)

**05. Core Item.** Modifications to Section 1-201.10(B) by amending the term “core item” to mean the same as “non-critical item.” (7-1-16)

**06. Cottage Food Operation.** A cottage food operation is when a person or business prepares or produces cottage food products in the home kitchen of that person's primary residence or other designated kitchen or location. (7-1-16)

**07. Cottage Food Product.** Cottage food products are non-time/temperature control for safety (non-TCS) foods that are sold directly to a consumer. Examples of cottage foods may include but are not limited to: baked goods, fruit jams and jellies, fruit pies, breads, cakes, pastries and cookies, candies and confections, dried fruits, dry herbs, seasonings and mixtures, cereals, trail mixes and granola, nuts, vinegar, popcorn and popcorn balls, and cotton candy. (7-1-16)

**08. Critical Item.** A provision of this code that if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. A critical item includes items with a quantifiable measure to show control of hazards such as but not limited to, cooking, reheating, cooling, and hand washing. Critical item means the same as “priority item.” Critical item is an item that is denoted with a superscript (P), (7-1-16)

**09. Department.** The Idaho Department of Health and Welfare as established in Section 56-1002, Idaho Code. (4-6-05)

**10. Director.** The Director of the Idaho Department of Health and Welfare as established in Section 56-1003, Idaho Code. (4-6-05)

**11. Embargo.** An action taken by the regulatory authority that places a food product or equipment used in food production on hold until a determination is made on the product's safety. (4-6-05)

**12. Enforcement Inspection.** An inspection conducted by the regulatory authority when compliance with these rules by a food establishment is lacking and violations remain uncorrected after the first follow-up inspection to a routine inspection. (4-6-05)

**13. Farmers Market.** Any fixed or mobile retail food establishment at which farmer producers sell agricultural products directly to the general public. Farmers market means the same as “agricultural market” and “roadside stand.” (7-1-16)

**14. Food Establishment.** Modifications to Section 1-201.10 amends the definition of “food establishment” as follows: (7-1-16)

**a.** Delete Subparagraph 3(c) of the term “food establishment” in the 2013 Food Code; (7-1-16)

**b.** Add Subparagraph 3(h) to the term “food establishment” to clarify that a cottage food operation is not a food establishment. (7-1-16)

**15. Food Processing Plant.** Modification to Section 1-201.10 amends the definition of “food processing plant” by deleting Subparagraph 2 of the term “food processing plant” in the 2013 Food Code. (7-1-16)

**16. Good Retail Practice.** Good retail practice means the preventive measures that include practices and procedures that effectively control the introduction of pathogens, chemicals, and physical objects into food. ( )

~~167.~~ **High-Risk Food Establishment.** A high-risk food establishment does the following operations: (4-6-05)

**a.** Extensive handling of raw ingredients; (4-6-05)

**b.** Preparation processes that include the cooking, cooling and reheating of time/temperature control for safety (TCS) foods; or (7-1-16)

**c.** A variety of processes requiring hot and cold holding of time/temperature control for safety (TCS) foods. (7-1-16)

~~178.~~ **Intermittent Food Establishment.** An intermittent food establishment is a food vendor that operates for a period of time, not to exceed three (3) days per week, at a single, specified location in conjunction with a recurring event and that offers time/temperature control for safety (TCS) foods to the general public. Examples of a recurring event may be a farmers’ or community market, or a holiday market. An intermittent food establishment does not include the vendor of farm fresh ungraded eggs at a recurring event (7-1-16)

## **111. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.**

The definitions defined in this section are modifications or additions to the definitions and terms provided in the 2013 Food Code. (7-1-16)

**01. License.** The term “license” is used in these rules the same as the term “permit” is used in the 2013 Food Code. (7-1-16)

**02. License Holder.** The term “license holder” is used in these rules the same as the term “permit holder” is used in the 2013 Food Code. (7-1-16)

**03. Low-Risk Food Establishment.** A low-risk food establishment provides factory-sealed pre-packaged non-time/temperature control for safety (non-TCS) foods. The establishment may have limited preparation of non-time/temperature control for safety (non-TCS) foods only. (7-1-16)

**04. Medium-Risk Food Establishment.** A medium-risk food establishment includes the following: (4-6-05)

- a. A limited menu of one (1) or two (2) items; or (4-6-05)
- b. Pre-packaged raw ingredients cooked or prepared to order; or (4-6-05)
- c. Raw ingredients requiring minimal assembly; or (4-6-05)
- d. Most products are cooked or prepared and served immediately; or (4-6-05)
- e. Hot and cold holding of time/temperature control for safety (TCS) foods is restricted to single meal service. (7-1-16)

**05. Mobile Food Establishment.** A mobile food establishment is a food establishment selling or serving food for human consumption from any vehicle or other temporary or itinerant station and includes any movable food service establishment, truck, van, trailer, pushcart, bicycle, watercraft, or other movable food service with or without wheels, including hand-carried, portable containers in or on which food or beverage is transported, stored, or prepared for retail sale or given away at temporary locations. (7-1-16)

**06. Non-Critical Item.** A non-critical item is a provision of this Code that is not designated as a critical item or potentially-critical item. A non-critical item includes items that usually relate to general sanitation, operation controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance. Non-critical item means the same as CORE ITEM. (7-1-16)

**07. Potentially-Critical Item.** A potentially-critical item is a provision in this Code whose application supports, facilitates, or enables one (1) or more critical items. Potentially critical item includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling. Potentially-critical item means the same as priority foundation item. A potentially-critical item is an item that is denoted in this code with a superscript (Pf). (7-1-16)

**08. Priority Item.** Modification to Section 1-201.10(B) by amending the term “priority item” to read priority item means the same as critical item. (7-1-16)

**09. Priority Foundation Item.** Modification to Section 1-201.10(B) by amending the term “priority foundation item” to read priority foundation item means the same as potentially-critical item. (7-1-16)

**10. Regulatory Authority.** The Department or its designee is the regulatory authority authorized to enforce compliance of these rules. (4-6-05)

a. The Department is responsible for preparing the rules, rule amendments, standards, policy statements, operational procedures, program assessments and guidelines. (4-6-05)

b. The seven (7) Public Health Districts and the Division of Licensing and Certification have been designated by the Director as the regulatory authority for the purpose of issuing licenses, collecting fees, conducting inspections, reviewing plans, determining compliance with the rules, investigating complaints and illnesses, examining food, embargoing food and enforcing these rules. (7-1-16)

**11. Risk Control Plan.** Is a document describing the specific actions to be taken by the license holder to address and correct a continuing hazard or risk within the food establishment. (4-6-05)

**12. Risk Factor Violation.** Risk factor violation means improper practices or procedures which are most frequently identified by epidemiologic investigation as a cause of foodborne illness or injury. ( )

**123. Roadside Stand.** Any fixed or mobile retail food establishment at which an individual farmer producer sells own agricultural products directly to consumers. Roadside stand means the same as “agricultural market” and “farmers market.” (7-1-16)

(BREAK IN CONTINUITY OF SECTIONS)

**841. INSPECTION SCORES.**

The regulatory authority must provide the license holder an inspection report with a total score indicating the number of ~~critical item~~ critical risk factor violations and the number of repeat ~~critical~~ critical risk factor violations added together. Repeat violations are those observed during the last inspection. The inspection report will also score the total number of ~~potentially-critical violations and non-critical~~ good retail practice violations and the number of repeat ~~potentially-critical violations and non-critical~~ good retail practice violations. These scores will be used to determine if a follow-up inspection or a written report of correction is needed to verify corrections have been made. (7-1-16)( )

**01. Medium-Risk Food Establishment.** If the ~~critical~~ critical risk factor violations exceed three(3), ~~or the potentially-critical violations exceed six (6);~~ or ~~non-critical~~ good retail practice violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (7-1-16)( )

**02. High-Risk Food Establishment.** If the ~~critical~~ critical risk factor violations exceed five (5), ~~or the potentially-critical violations exceed eight (8);~~ or ~~non-critical~~ good retail practice violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (7-1-16)( )

**03. Written Violation Correction Report.** A written violation correction report by the license holder may be provided to the regulatory authority if the total inspection score of the food establishment does not exceed those listed in Section 845 of these rules. The report must be mailed within five (5) days of the correction date identified on the inspection report. (4-6-05)

**842. -- 844. (RESERVED)**

**845. VERIFICATION AND DOCUMENTATION OF CORRECTION.**

In addition to Section 8-405.20 of the 2013 Food Code, the on-site follow-up inspection may not be required for verification of correction if the regulatory authority chooses to accept a written report of correction from the license holder. (7-1-16)

**01. Written Report of Correction.** The regulatory authority may choose to accept a written report of correction from the license holder stating that specific violations have been corrected. The license holder must submit this report to the regulatory authority within five (5) days after the correction date identified on the inspection report. (4-6-05)

**a.** Medium-risk food establishment. If the ~~critical~~ critical risk factor violations do not exceed three (3), ~~or the potentially-critical violations do not exceed six (6);~~ or the ~~non-critical~~ good retail practice violations do not exceed six (6), a follow-up inspection is not required for verification of correction. (7-1-16)( )

**b.** High-risk food establishment. If the ~~critical~~ critical risk factor violations do not exceed five (5), ~~or the potentially-critical violations do not exceed eight (8);~~ or the ~~non-critical~~ good retail practice violations do not exceed eight (8), a follow-up inspection is not required for verification of correction. (7-1-16)( )

**02. Risk Control Plan.** The regulatory authority may require the development of a risk control plan as verification of correction. The risk control plan must provide documentation on how the license holder will obtain long term correction of critical violations that are repeated violations, including how control will be monitored and who will be responsible. (4-6-05)



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

### **16.03.03 – RULES GOVERNING CHILD SUPPORT SERVICES**

#### **DOCKET NO. 16-0303-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

Changes were made to the proposed text to amend the amount and when arrears of child support reports to consumer agencies begin after a court order is finalized. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 5, 2016, Idaho Administrative Bulletin, [Vol. 16-10, pages 437 and 438](#).

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

There is no anticipated fiscal impact to the State General Fund or to any other funds for this rule change. The child support automated system is currently able to comply with this reporting change. This rulemaking is intended to be cost-neutral.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Julie Hammon at (208) 249-8369.

DATED this 4th day of November, 2016.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Tel: (208) 334-5500  
Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto: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 Section 56-203A, 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:

This rule amends when the Department will report a non-custodial parent for non-payment of child support to a consumer reporting agency. The current reporting requirement is when the arrears are in excess of \$500. This proposed rule will require reporting when the accrued arrears exceed three months of child support that is due.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

There is no anticipated fiscal impact to the State General Fund or to any other funds for this rule change. The child support automated system is currently able to comply with this reporting change. This rulemaking is intended to be cost-neutral.

**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 61](#).

**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 Kandace Yearsley at (208) 334-0620.

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 30th 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 rule.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0303-1601**

603. CONSUMER REPORTING AGENCIES.

01. **Consumer Reporting Agency.** Any person who for monetary fees, dues or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. (7-1-98)

02. **Reports.** Reports are made to consumer reporting agencies ~~once arrears accrue in excess of five hundred~~ of any non-custodial parent who owes overdue support exceeding two thousand dollars (\$~~5~~2000) and is at least three (3) months in arrears after the court order is finalized. Notice will be provided to the non-custodial parent prior to the report being made available to the agencies and ~~shall~~ will inform the non-custodial parent of the methods available for contesting the accuracy of the information. ~~(7-1-98)~~ ( )

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 – RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1601**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

The Department amended these rules to improve business process and to align the Able Bodied Adult Without Dependents (ABAWD) program requirements with regulations.

There are no changes to the pending 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 439 and 440](#).

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

There is no anticipated fiscal impact to the state general fund as a result of this rulemaking.

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

DATED this 4th day of November, 2016.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Tel: (208) 334-5500  
Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto: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 Section 56-203, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 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 Department is removing language in rule that requires rule citations be included as part of the customer notices. This change will allow the Department to improve its business process when communicating with customers. The rules are also being amended to align the 36-month fixed time limitation for the Able Bodied Adult Without Dependents (ABAWD) program requirements.

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

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

There is no anticipated fiscal impact to the state general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department determined it was not feasible since changes being made are to align with federal guidance.

**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 Kristin Matthews at (208) 334-5553.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1601**

**251. ABLE BODIED ADULTS WITHOUT DEPENDENTS (ABAWD) WORK REQUIREMENT.**

To participate in the Food Stamp program, a person must meet one (1) of the conditions in Subsections 251.01 through 251.05 of this rule. A person who does not meet one (1) of these conditions may not participate in the Food Stamp program as a member of any household for more than three (3) full months (consecutive or otherwise) in a fixed thirty-six (36) month period. ~~The initial thirty-six (36) month period began December 1, 1996. The thirty-six (36) month period restarts the first day of December every third year thereafter.~~ (5-8-09) ( )

**01. Work at Least Eighty Hours per Month.** The person must work at least eighty (80) hours per month. The definition of work under Section 251 of this rule is any combination of: (5-3-03)

- a. Work in exchange for money. (3-15-02)
- b. Work in exchange for goods or services, known as “in-kind” work. (3-15-02)
- c. Unpaid work, with a public or private non-profit agency. (3-15-02)

**02. Participate in JSAP or Another Work Program.** The person must participate in and comply with the requirements of the JSAP program (other than job search or job readiness activities), the WIA program, a program under Section 236 of the Trade Act of 1974, or another work program recognized by the Department. The person must participate for at least eighty (80) hours per month. (3-15-02)

**03. Combination of Work and Work Programs.** The person must work and participate in a work program. Participation in work and work programs must total at least eighty (80) hours per month. (3-15-02)

**04. Participate in Work Opportunities.** The person must participate in and comply with the requirements of a Work Opportunities program. (7-1-99)

**05. Residents of High Unemployment Areas.** ABAWDs residing in a county identified as having high unemployment or lack of jobs are not subject to the three (3) month limitation of benefits. ABAWDs residing in these counties are subject to JSAP work requirement but will not lose Food Stamp eligibility after three (3) months if they participate fewer than eighty (80) hours per month. An ABAWD residing in a high unemployment area must participate according to his plan. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**630. ADEQUATE NOTICE.**

Adequate notice is a written statement telling the household the action the Department is taking. The notice must tell the reasons for the action ~~and the rules supporting the action~~. The notice must advise the household of the right to a hearing. All notices must be adequate. If Food Stamps are reduced, the household must receive the notice on or before the first day of the month the action is effective. If Food Stamps are ended, the household must receive the notice on or before the first day of the month the action is effective. (7-1-99) ( )

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

**DOCKET NO. 16-0305-1601**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

Changes were made to the pending rule to ensure that the an irrevocable, non-assignable annuity is not treated as an asset transfer if the requirements in Subsections 838.03 through 838.05 apply. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the October 5, 2016, Idaho Administrative Bulletin, [Vol. 16-10, pages 441 through 445](#).

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

There is no anticipated fiscal impact as a result of this rulemaking. The rules clarify current practices for long term care and are intended to be cost neutral.

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

DATED this 4th day of November, 2016.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Tel: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto: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 Section 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than 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: clarify the primary method of determining countable self-employment income that aligns with social security rules; clarify what establishes disability criteria for residents in a nursing home who receive Medicaid; and remove the interest rate criteria for irrevocable annuities.

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

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

There is no anticipated fiscal impact for this rulemaking. The rules are clarifying current practices for long term care and are intended to be cost neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department determined these changes clarify current practices for a federal program that are not negotiable.

**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 Callie Harrold at (208) 334-0663.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

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

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-1601**

**402. SELF-EMPLOYMENT ALLOWABLE EXPENSES.**

Allowable operating expenses subtracted from self-employment income are listed in Subsections 402.01 through 402.16~~7~~ of this rule. ~~(3-25-16)~~( )

- 01. Labor.** Labor paid to individuals not in the family. (7-1-99)
- 02. Materials.** Materials such as stock, seed and fertilizer. (7-1-99)



03.	<b>Rent.</b> Rent on business property.	(7-1-99)
04.	<b>Interest.</b> Interest paid to purchase income producing property.	(7-1-99)
05.	<b>Insurance.</b> Insurance paid for business property.	(7-1-99)
06.	<b>Taxes.</b> Taxes on income producing property.	(7-1-99)
07.	<b>Business Transportation.</b> Business transportation as defined by the IRS.	(7-1-99)
08.	<b>Maintenance.</b> Landscape and grounds maintenance.	(7-1-99)
09.	<b>Lodging.</b> Lodging for business related travel.	(7-1-99)
10.	<b>Meals.</b> Meals for business related travel.	(7-1-99)
11.	<b>Use of Home.</b> Costs of partial use of home for business.	(7-1-99)
12.	<b>Legal.</b> Business related legal fees.	(7-1-99)
13.	<b>Shipping.</b> Business related shipping costs.	(7-1-99)
14.	<b>Uniforms.</b> Business related uniforms.	(7-1-99)
15.	<b>Utilities.</b> Utilities for business property.	(7-1-99)
16.	<b>Advertising.</b> Business related advertising.	(7-1-99)
17.	<b>Depreciation.</b> Depreciation for equipment, machinery, or other capital investments.	( )
403.	<b>SELF-EMPLOYMENT EXPENSES NOT ALLOWED.</b> Self-employment expenses not allowed are listed in Subsections 403.01 through 403.098.	(7-1-99)( )
01.	<b>Payments on the Principal of Real Estate.</b> Payments on the principal of real estate mortgages on income-producing property.	(7-1-99)
02.	<b>Purchase of Capital Assets or Durable Goods.</b> Purchases of capital assets, equipment, machinery, and other durable goods. Payments on the principal of loans for these items.	(7-1-99)
03.	<b>Taxes.</b> Federal, state, and local income taxes.	(7-1-99)
04.	<b>Savings.</b> Monies set aside for future use such as retirement or work related expenses.	(7-1-99)
05.	<b>Depreciation.</b> Depreciation for equipment, machinery, or other capital investments.	(7-1-99)
06.	<b>Labor Paid to Family Member.</b> Labor paid to any family member.	(7-1-99)
07.	<b>Loss of Farm Income.</b> Loss of farm income subtracted from other income.	(7-1-99)
08.	<b>Personal Transportation.</b> Personal transportation.	(7-1-99)
09.	<b>Net Losses.</b> Net losses from previous periods.	(7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**720. LONG-TERM CARE RESIDENT AND MEDICAID.**

A resident of a long-term care facility must meet the AABD eligibility criteria to be eligible for Medicaid. A long-term care facility is a nursing facility or an intermediate care facility for persons with intellectual disabilities. The need for long-term care is determined using IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-30-07)

**01. Resources of Resident.** The resident's resource limit is two thousand dollars (\$2,000). Resources of a married person in long-term care are computed using Federal Spousal Impoverishment rules. Under the SSI method, spouses can use the three thousand dollar (\$3,000) couple resource limit if more advantageous. The couple must have lived in the nursing home, in the same room, for six (6) months. (3-20-04)

**02. Medicaid Income Limit of Long-Term Care Resident Thirty Days or More.** The monthly income limit for a long-term care facility resident is three (3) times the Federal SSI benefit for a single person. To qualify for this income limit the participant must be, or be likely to remain, in long-term care at least thirty (30) consecutive days. (3-20-04)

**03. Medicaid Income Limit of Long-Term Care Resident Less Than Thirty Days.** The monthly income limit, for the resident of a long-term care facility for less than thirty (30) consecutive days, is the AABD income limit for the participant's living situation before long-term care. Living situations before long-term care do not include hospital stays. (7-1-99)

**04. Income Not Counted.** The income listed in Subsections 720.04.a. through 720.04.e. of these rules is not counted to compute Medicaid eligibility for a long-term care facility resident. This income is counted in determining participation in the cost of long-term care. (4-2-08)

**a.** Income excluded or disregarded, in determining eligibility for AABD cash, is not counted. (3-20-04)

**b.** The September 1972 RSDI increase is not counted. (3-20-04)

**c.** Any VA Aid and Attendance allowance, including any increment which is the result of a VA Unusual Medical Expense allowance, is not counted. These allowances are not counted for patient liability, unless the veteran lives in a state operated veterans' home. (3-20-04)

**d.** RSDI benefit increases, from cost-of-living adjustments (COLA) after April 1977, are not counted if they made the participant lose SSI or AABD cash. The COLA increases after SSI or AABD cash stopped are not counted. (3-20-04)

**e.** Income paid into an income trust exempt from counting for Medicaid eligibility under Subsection 872.02 of these rules is used for patient liability. Income paid to the trust and not used for patient liability, is subject to the asset transfer penalty. (3-20-04)

**05. Medicaid Participant Residing in a Skilled Nursing Facility.** When a Medicaid participant who is a resident of a skilled nursing facility and meets that level of care as evidenced by the PASARR defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" Section 227, the resident is determined to be disabled for the duration of his residency in the skilled nursing facility. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**838. ANNUITY AS ASSET TRANSFER.**

Except as provided in this rule, when assets are used to purchase an annuity during the look-back period, it is an asset transfer presumed to be made for the purpose of qualifying for Medicaid. To rebut this presumption, the participant must provide proof that clearly establishes the annuity was not purchased to make the participant eligible for Medicaid or avoid recovery from the estate following death. Proof is met if the participant shows the annuity meets the requirements described in Subsections 838.02 through 838.05 of this rule. (4-2-08)

**01. Revocable Annuity.** A revocable annuity is an annuity that can be assigned. The surrender amount of a revocable annuity is a countable resource. (4-2-08)

**02. Irrevocable Annuity.** The purchase price of an irrevocable, non-assignable annuity is treated as an asset transfer, unless the requirements of Subsections ~~838.02.a, 838.02.b,~~ 838.03 ~~and through~~ 838.04 of this rule are met. (4-2-08)( )

**#03. Irrevocable Annuity Life Expectancy Test.** The participant's life expectancy, as shown in the following table, must equal or exceed the term of the annuity. Using ~~the~~ Table 838.02-a-3 compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

TABLE 838.02-a-3 - LIFE EXPECTANCY TABLE					
Age	Years of Life Remaining Male	Years of Life Remaining Female	Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	79.26	74	10.12	12.74
10	64.03	69.93	75	9.58	12.09
20	54.41	60.13	76	9.06	11.46
30	45.14	50.43	77	8.56	10.85
40	35.94	40.86	78	8.07	10.25
50	27.13	31.61	79	7.61	9.67
60	19.07	22.99	80	7.16	9.11
61	18.33	22.18	81	6.72	8.57
62	17.60	21.38	82	6.31	8.04
63	16.89	20.60	83	5.92	7.54
64	16.19	19.82	84	5.55	7.05
65	15.52	19.06	85	5.20	6.59
66	14.86	18.31	86	4.86	6.15
67	14.23	17.58	87	4.55	5.74
68	13.61	16.85	88	4.26	5.34
69	13.00	16.14	89	3.98	4.97
70	12.41	15.44	90	3.73	4.63
71	11.82	14.75	95	2.71	3.26
72	11.24	14.06	100	2.05	2.39
73	10.67	13.40	110	1.14	1.22

(3-30-07)( )

~~b. Annual Interest Test. Any annuity is presumed to produce interest, at minimum, that is equal to the treasury rate.~~ (4-2-08)

**034.** **State Named as Beneficiary.** The purchase of an annuity is treated as an asset transfer unless the State of Idaho, Medicaid Estate Recovery is named as: (3-30-07)

**a.** The remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual under this title; or (4-2-08)

**b.** The remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value. (3-30-07)

**045.** **Equal Payment Test.** The annuity must provide for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made. (3-30-07)

**056.** **Permitted Annuity.** The purchase of an annuity is not treated as an asset transfer if the annuity meets any of the descriptions in Sections 408(b), or 408(q), Internal Revenue Code; or is purchased with proceeds from an account or trust described in Sections 408(a), 408(c), or 408(p), Internal Revenue Code, or is a simplified employee pension as described in Section 408(k), Internal Revenue Code, or is a Roth IRA described in Section 408A, Internal Revenue Code. (3-30-07)

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

### **16.03.08 – RULES GOVERNING THE TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO (TAFI) PROGRAM**

**DOCKET NO. 16-0308-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code and 45 CFR Parts 260 - 265.

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

The Department amended these rules to clarify definitions for parents, step-parents, and caretaker relatives.

There are no changes to the pending 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 446 through 449](#).

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

There is no anticipated fiscal impact to the State General Fund or to dedicated funds for this rule change. This rulemaking is intended to be cost-neutral.

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

DATED this 4th day of November, 2016.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
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E-mail: [dhwrules@dhw.idaho.gov](mailto: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 Section 56-202, Idaho Code and 45 CFR Parts 260 - 265.

**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 Department is amending the TAFI rules to clarify definitions for parents, step-parents, and caretaker relatives. These rules also modify additional components in other sections of rules that pertain to the changes made to those definitions.

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

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

There is no anticipated fiscal impact to the State General Fund or to dedicated funds for this rule change. This rulemaking is intended to be cost-neutral.

**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, page 34](#).

**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 Sarah Buenrostro at (208) 334-4934.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-1601

**010. DEFINITIONS.**

- 01. Agency Error.** A benefit error caused by the Department's action or failure to act. (7-1-12)
- 02. Applicant.** An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)
- 03. Assistance.** Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (3-30-01)
- 04. Caretaker Relative.** An adult who is a specified relative, other than parents, who has an eligible related child residing with them and who is responsible for the child's care. Only one (1) child in the family must be related to one (1) of the following specified relatives: brother, sister, aunt/great aunt, uncle/great uncle, grandparent/great grandparent, nephew, niece, cousin, any one (1) of these relationships by half-blood, a step-sibling, or a spouse of a relative by marriage, even if the marriage has ended. ~~(5-8-09)~~ ( )
- 05. Claim Determination.** The action taken by the Department establishing the household's liability for repayment when a TAFI overpayment occurs. (7-1-12)
- 06. Department.** The Idaho Department of Health and Welfare. (7-1-98)
- 07. Dependent Child.** A child under the age of eighteen (18), or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training. (3-30-01)
- 08. Earned Income.** Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)
- 09. Family.** A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (3-30-01)
- 10. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)
- 11. Household.** A unit of eligible individuals that includes parents ~~and step-parents~~, or may include caretaker relatives who have an eligible child residing with them. ~~(7-1-12)~~ ( )
- 12. Inadvertent Household Error (IHE).** A benefit error caused unintentionally by the household. (7-1-12)
- 13. Noncustodial Parent.** A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (3-30-01)
- 14. Parent.** The mother/~~step-mother~~ or father/~~step-father~~ of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. ~~(7-1-98)~~ ( )
- 15. Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)

16. **Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)

17. **Temporary Assistance for Families in Idaho (TAFI).** Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (3-30-01)

18. **Temporary Assistance for Needy Families (TANF).** The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (3-30-01)

19. **Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)

~~20. **Step Parent.** An individual in the TAFI household who is married to the parent of an eligible child when there are no children in common. (7-1-12)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. MANDATORY TAFI HOUSEHOLD MEMBERS.**

Individuals who must be included in the family are listed in Subsections 125.01 through 125.04 of this rule. (7-1-12)

01. **Children.** Children under the age of eighteen (18) or, under the age of nineteen (19) if they are attending a secondary school ~~or the equivalent level of vocational or technical training~~ full time. Children must reside with a parent or caretaker relative who exercises care and control of them. A dependent child's ~~natural or adoptive~~ brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. ~~(5-8-09)~~( )

02. **Parents.** Parents as defined in Section 010 of these rules, who have an eligible ~~natural or adopted~~ child residing with them. ~~(7-1-98)~~( )

03. **Pregnant Woman.** A pregnant woman with no other children who is in at least the third calendar month before the baby is due and is unable to work due to medical reasons. (4-5-00)

~~04. **Step Parents.** Individuals who are married to the parent of a dependent child. (7-1-12)~~

~~05~~4. **Spouses.** Anyone related by marriage to another mandatory household member. (7-1-12)

**126. BUDGETING FOR CARETAKER RELATIVES.**

Individuals who may be eligible are listed in Subsections 126.01 and 126.0~~2~~3 of this rule. ~~(5-8-09)~~( )

01. **Relatives.** Adult specified relatives other than parents who have an eligible related child residing with them and who are responsible for the child's care. Only one (1) child in the family must be related to one (1) of the ~~following~~ specified caretaker relatives: ~~brother, sister, aunt, uncle, nephew, niece, first cousin, or first cousin once removed; one (1) of these relationships prefixed by "grand" or "great"; one (1) of these relationships by half blood; a stepparent, step-sibling, or the spouse of a relative by marriage, even if the marriage has ended~~ defined in Section 010 of these rules. ~~(5-8-09)~~( )

02. **Caretaker Relative Applying Only for Relative Child.** When a caretaker relative applies only for a relative child, only the child's income is counted. ( )

~~02~~3. **Multiple Children.** When multiple children are included in the family unit and any child receives Social Security Income, that income is not counted in the determination of the grant amount. (5-8-09)



(BREAK IN CONTINUITY OF SECTIONS)

233. -- ~~237~~<sup>9</sup>. (RESERVED)

~~238. CHILD LIVING WITH PARENT AND STEPPARENT.~~

~~When a child lives with a parent and a stepparent, fifty percent (50%) of the stepparent's earned and unearned income, minus child support paid is unearned income to the family. This calculation does not apply to families consisting of two (2) stepparents who have no children in common. Ineligibility due to citizenship or felony status of the stepparent does not affect this calculation.~~ (7-1-98)

~~239. CARETAKER RELATIVE APPLYING ONLY FOR RELATIVE CHILD.~~

~~When a caretaker relative applies only for a relative child, only the child's income is counted.~~ (5-8-09)

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

### **16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective July 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also 42 CFR 440.70.

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

These rule changes serve to better ensure program integrity, increase quality of care, and align the chapter with recent changes regarding home health services and durable medical equipment (DME) in federal regulations.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The amendments to the pending docket make consistent the use of the term “non-physician practitioner” in place of “midlevel practitioner.” Three (3) sections that contain the term “midlevel practitioner” appear in the text of the pending docket that were not in the original proposed rule that published in the October 5, 2016, Administrative Bulletin. These sections have been included so the preferred term “non-physician practitioner” is used consistently throughout the chapter. Finally, a fourth Section (725) that was not in the original Proposed text is being amended to correct the fraction of the total purchase price referred to in Subsection 725.02.b. so that it aligns with the corresponding fraction that appears in the proposed rule as amended in Subsection 753.06.c. (codified Subsection 753.01.b.iii.).

Also, a definition of “non-physician practitioner” has been added to the chapter to clarify those non-physician practitioners who may conduct face-to-face encounters and make explicit that the term “non-physician practitioner” has replaced the term “midlevel” as it had been used throughout the chapter.

The complete text of the proposed rule was published in the October 5, 2016, Idaho Administrative Bulletin, **Vol. 16-10, pages 450 through 473**.

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

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Karen Westbrook at (208) 364-1960.

DATED this 18th day of November, 2016.

Tamara Prisock, DHW - Administrative Rules Unit  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036

**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, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also 42 CFR 440.70.

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

<b>Monday, October 17, 2016 2:30 pm (Local)</b>	<b>Tuesday, October 18, 2016 11:30 am (Local)</b>	<b>Wednesday, October 19, 2016 9:00 am (Local)</b>
<b>Medicaid Reg. VII Office 150 Shoup Avenue Large Conf. Rm., 2nd Floor Idaho Falls, ID</b>	<b>Medicaid Reg. I Office 1120 Ironwood Drive, Ste. 102 Coeur d'Alene, ID</b>	<b>Medicaid Central Office 3232 W. Elder Street Conf. Rm. D - West/East Boise, ID</b>
<b>TELECONFERENCE CALL-IN</b>		

**Toll Free: 1-877-820-7831 -- Participant Code: 701700**

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

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

These rule changes serve to better ensure program integrity, to increase quality of care, and to align the chapter with recent changes regarding home health services and durable medical equipment (DME) in federal regulations.

These rule changes will:

1. Clarify requirements for physician orders for home health services and DME;
2. Add a requirement for a documented face-to-face encounter prior to delivery of services or equipment and supplies for home health services and DME providers;
3. Clarify the non-physician practitioners who may conduct face-to-face encounters; and
4. Clarify that home health services and DME cannot be restricted to services provided in the home, and that they may be provided in any setting in which normal life activities take place.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and was deemed not feasible as these changes bring the rules into alignment with federal regulations and preserve federal participation dollars for these programs.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the edition of the CMS/Medicare Durable Medical Equipment Coverage Manual incorporated by reference in this chapter is being updated from 2007 edition to the 2016 edition along with the URL to the most current edition.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karen Westbrook at (208) 364-1960.

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 30th day of August, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1601

**004. INCORPORATION BY REFERENCE.**

The following are incorporated by reference in this chapter of rules:

(3-30-07)

~~01. 42 CFR Part 447. 42 CFR Part 447, "Payment for Services," revised as of October 1, 2001, is available from CMS, 7500 Security Blvd, Baltimore, M.D., 21244-1850 or on the Code of Federal Regulations internet site at [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfr/browse/Title42/42cfr447\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfr/browse/Title42/42cfr447_main_02.tpl). (3-30-07)~~

~~02. American Academy of Pediatrics (AAP) Periodicity Schedule. This document is available on the internet at [https://www.aap.org/en-us/Documents/periodicity\\_schedule.pdf](https://www.aap.org/en-us/Documents/periodicity_schedule.pdf). The schedule is also available at the Division of Medicaid, 3232 Elder Street, Boise, ID 83705. (3-30-07)~~

**031. American Speech-Language-Hearing Association (ASHA): Medicaid Guidance for Speech-Language Pathology Services.** The American Speech-Language-Hearing Association (2004) Medicaid Guidance for Speech-Language Pathology Services: Addressing the "Under the Direction of" Rule technical report is available on the internet at: <http://www.asha.org/policy/ps2004-00098.htm>. The report may also be obtained at the ASHA National Office, 2200 Research Boulevard, Rockville, MD 20850-3289, telephone (301) 296-5700. (3-29-10)

~~04. CDC Child and Teen BMI Calculator. The Centers for Disease Control (CDC) Child and Teen Body Mass Index (BMI) Calculator is available on the internet at <http://www.cdc.gov/ncepdphp/dnpa/bmi/index.htm>. The Calculator is also available through the Division of Medicaid, 3232 Elder Street, Boise, ID 83705. (3-30-07)~~

~~052. DSM-5. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5) Arlington, VA, American Psychiatric Association, 2013. A copy of the manual is available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. (3-20-14)~~

**063. Estimated Useful Lives of Depreciable Hospital Assets, 2004 Revised Edition, Guidelines Lives.** This document may be obtained from American Hospital Publishing, Inc., 211 East Chicago Avenue, Chicago, IL, 60611. (3-30-07)

~~07. Idaho Infant Toddler Program Implementation Manual (Revised September 1999). The full text~~

~~of the "Idaho Infant Toddler Program Implementation Manual," revised September 1999, is available at <http://www.infanttoddler.idaho.gov>.~~ (7-1-13)

~~08. **Idaho Special Education Manual, September 2001.** The full text of the "Idaho Special Education Manual, September 2001" is available on the Internet at [http://www.sde.idaho.gov/sped/shared/2016 Special Education Manual.pdf](http://www.sde.idaho.gov/sped/shared/2016%20Special%20Education%20Manual.pdf). A copy is also available at the Idaho Department of Education, 650 West State Street, P.O. Box 83720, Boise, Idaho 83720-0027.~~ (3-30-07)

**094. Medicare Durable Medical Equipment (DME) Medicare Administrative Contractor (MAC) Jurisdiction D Supplier Manual 2007-16, As Amended (CMS/Medicare DME Coverage Manual).** Since the supplier manual is amended on a quarterly basis by CMS, the current year's manual is being incorporated by reference, as amended, to allow for the incorporation of the most recent amendments to the manual. The full text of the ~~Medicare~~ CMS/Medicare DME ~~MAC Jurisdiction D Supplier~~ Coverage Manual is available via the Internet at <https://med.noridianmedicare.com/web/jddme/education/supplier-manual>. (3-30-07)( )

~~10. **Physician's Current Procedural Terminology (CPT® Manual).** This document may be obtained from the American Medical Association, P.O. Box 10950, Chicago, Illinois 60610, or online at <http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/cpt.page>.~~ (3-30-07)

~~105.~~ **Provider Reimbursement Manual (PRM).** The Provider Reimbursement Manual (PRM), Part I and Part II (CMS Publication 15-1 and 15-2), is available on the CMS website at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals.html>. (3-30-07)

~~106.~~ **SIB-R Comprehensive Manual.** Scales of Independent Behavior - Revised Comprehensive Manual, 1996, Riverside Publishing Co, 425 Spring Lake Drive, Itasca, IL 60143-2079. A copy is available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho 83702. (3-30-07)

~~107.~~ **Travel Policies and Procedures of the Idaho State Board of Examiners.** The text of "Idaho State Travel Policies and Procedures of the Idaho State Board of Examiners," Appendices A and B, June 13, 2000, is available at the Office of the State Controller, 700 W. State St., 5th Fl., Box 83720, Boise, Idaho 83720-0011 or on the Internet at <http://www.sco.idaho.gov>. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS: A THROUGH H.**

For the purposes of these rules, the following terms are used as defined below: (3-30-07)

**01. AABD.** Aid to the Aged, Blind, and Disabled. (3-30-07)

**02. Abortion.** The medical procedure necessary for the termination of pregnancy endangering the life of the woman, or the result of rape or incest, or determined to be medically necessary in order to save the health of the woman. (3-30-07)

**03. Amortization.** The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (3-30-07)

**04. Ambulatory Surgical Center (ASC).** Any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and which is certified by the U.S. Department of Health and Human Services as an ASC. (3-30-07)

**05. Audit.** An examination of provider records on the basis of which an opinion is expressed representing the compliance of a provider's financial statements and records with Medicaid law, regulations, and rules. (3-30-07)

- 06. Auditor.** The individual or entity designated by the Department to conduct the audit of a provider's records. (3-30-07)
- 07. Audit Reports.** (3-30-07)
- a.** Draft Audit Report. A preliminary report of the audit finding sent to the provider for the provider's review and comments. (3-30-07)
- b.** Final Audit Report. A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. (3-30-07)
- c.** Interim Final Audit Report. A written report containing the results, findings, and recommendations, if any, from the audit of the provider, sent to the Department by the auditor. (3-30-07)
- 08. Bad Debts.** Amounts due to provider as a result of services rendered, but which are considered uncollectible. (3-30-07)
- 09. Basic Plan.** The medical assistance benefits included under this chapter of rules. (3-30-07)
- 10. Buy-In Coverage.** The amount the State pays for Part B of Title XVIII of the Social Security Act on behalf of the participant. (3-30-07)
- 11. Certified Registered Nurse Anesthetist (CRNA).** A Registered Nurse qualified by advanced training in an accredited program in the specialty of nurse anesthesia to manage the care of the patient during the administration of anesthesia in selected surgical situations. (3-30-07)
- 12. Claim.** An itemized bill for services rendered to one (1) participant by a provider and submitted to the Department for payment. (3-30-07)
- 13. CFR.** Code of Federal Regulations. (3-30-07)
- 14. Clinical Nurse Specialist (CNS).** A licensed professional nurse who meets all the applicable requirements to practice as clinical nurse specialist under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-30-07)( )
- 15. CMS.** Centers for Medicare and Medicaid Services. (3-30-07)
- 16. CMS/Medicare DME Coverage Manual. Medicare Durable Medical Equipment (DME) Medicare Administrative Contractor (MAC) Jurisdiction D Supplier Manual.** ( )
- 167. Co-Payment.** The amount a participant is required to pay to the provider for specified services. (3-30-07)
- 178. Cost Report.** A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-30-07)
- 189. Customary Charges.** Customary charges are the rates charged to Medicare participants and to patients liable for such charges, as reflected in the facility's records. Those charges are adjusted downward, when the provider does not impose such charges on most patients liable for payment on a charge basis or, when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt as described in Chapter 3, Sections 310 and 312, PRM. (3-30-07)
- 1920. Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (3-30-07)
- 201. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)

- 242. Dual Eligibles.** Medicaid participants who are also eligible for Medicare. (3-30-07)
- 223. Durable Medical Equipment (DME).** Equipment ~~other than prosthetics or orthotics that can withstand repeated use by one (1) or more individuals, is~~ and appliances that: ( )
- a.** Are primarily and customarily used to serve a medical purpose;~~is;~~ ( )
  - b.** Are generally not useful to ~~an~~ person individual in the absence of ~~a~~ disability, illness, or injury;~~is appropriate for use in the home, and is;~~ ( )
  - c.** Can withstand repeated use; ( )
  - d.** Can be reusable or removable; ( )
  - e.** Are suitable for use in any setting in which normal life activities take place; and ( )
  - f.** Are reasonable and medically necessary for the treatment of ~~a~~ disability, illness, or injury for a Medicaid participant. ~~(5-8-09)~~( )
- 234. Emergency Medical Condition.** A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following: (3-30-07)
- a.** Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy. (3-30-07)
  - b.** Serious impairment to bodily functions. (3-30-07)
  - c.** Serious dysfunction of any bodily organ or part. (3-30-07)
- 245. EPSDT.** Early and Periodic Screening, Diagnosis, and Treatment. (3-30-07)
- 256. Facility.** Facility refers to a hospital, nursing facility, or intermediate care facility for people with intellectual disabilities. (3-30-07)
- 267. Federally Qualified Health Center (FQHC).** An entity that meets the requirements of 42 U.S.C Section 1395x(aa)(4). The FQHC may be located in either a rural or urban area designated as a shortage area or in an area that has a medically underserved population. (3-30-07)
- 278. Fiscal Year.** An accounting period that consists of twelve (12) consecutive months. (3-30-07)
- 289. Forced Sale.** A forced sale is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner that requires ownership transfer to an existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (3-30-07)
- 2930. Healthy Connections.** The primary care case management model of managed care under Idaho Medicaid. (3-30-07)
- 301. Home Health Services.** Services and items that are: ( )
- a.** ~~o~~Ordered by a physician ~~and~~ as part of a home health plan of care; ( )
  - b.** ~~p~~Performed by a licensed, ~~nurse, registered physical therapist, or home health aide as defined in IDAPA 16.03.07, "Rules for Home Health Agencies."~~ qualified professional; ~~(3-30-07)~~( )

- c. Typically received by a Medicaid participant at the participant's place of residence; and ( )
- d. Reasonable and medically necessary for the treatment of a disability, illness, or injury for a Medicaid participant. ( )

**3+2. Hospital.** A hospital as defined in Section 39-1301, Idaho Code. (3-30-07)

**3+3. Hospital-Based Facility.** A nursing facility that is owned, managed, or operated by, or is otherwise a part of a licensed hospital. (3-30-07)

**011. DEFINITIONS: I THROUGH O.**

For the purposes of these rules, the following terms are used as defined below: (3-30-07)

**01. ICF/ID.** Intermediate Care Facility for People with Intellectual Disabilities. An ICF/ID is an entity licensed as an ICF/ID and federally certified to provide care to Medicaid and Medicare participants with developmental disabilities. (3-30-07)

**02. Idaho Behavioral Health Plan (IBHP).** The Idaho Behavioral Health Plan is a prepaid ambulatory health plan (PAHP) that provides outpatient behavioral health coverage for Medicaid-eligible children and adults. Outpatient behavioral health services include mental health and substance use disorder treatment as well as case management services. The coordination and provision of behavioral health services as authorized through the IBHP contract are provided to qualified, enrolled participants by a statewide network of professionally licensed and certified behavioral health providers. (3-20-14)

**03. Idaho Infant Toddler Program.** The Idaho Infant Toddler Program serves children from birth up to three (3) years of age (36 months), and must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. (7-1-13)

**a.** These requirements for the Idaho Infant Toddler Program include: (7-1-13)

i. Adherence to procedural safeguards and time lines; (7-1-13)

ii. Use of multi-disciplinary assessments and Individualized Family Service Plans (IFSPs); (7-1-13)

iii. Provision of early intervention services in the natural environment; (7-1-13)

iv. Transition planning; and (7-1-13)

v. Program enrollment and reporting requirements. (7-1-13)

**b.** The Idaho Infant Toddler Program may provide the following services for Medicaid reimbursement: (7-1-13)

i. Occupational therapy; (7-1-13)

ii. Physical therapy; (7-1-13)

iii. Speech-language pathology; (7-1-13)

iv. Audiology; and (7-1-13)

v. Children's developmental disabilities services defined under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-13)



- 04. In-Patient Hospital Services.** Services that are ordinarily furnished in a hospital for the care and treatment of an in-patient under the direction of a physician or dentist except for those services provided in mental hospitals. (3-30-07)
- 05. Intermediary.** Any organization that administers Title XIX or Title XXI; in this case the Department of Health and Welfare. (3-30-07)
- 06. Intermediate Care Facility Services.** Those services furnished in an intermediate care facility as defined in 42 CFR 440.150, but excluding services provided in a Christian Science Sanatorium. (3-30-07)
- 07. Legal Representative.** A parent with custody of a minor child, one who holds a legally-executed and effective power of attorney for health decisions, or a court-appointed guardian whose powers include the power to make health care decisions. (3-30-07)
- 08. Legend Drug.** A drug that requires, by federal regulation or state rule, the order of a licensed medical practitioner before dispensing or administration to the patient. (3-30-07)
- 09. Level of Care.** The classification in which a participant is placed, based on severity of need for institutional care. (3-30-07)
- 10. Licensed, Qualified Professionals.** Individuals licensed, registered, or certified by national certification standards in their respective discipline, or otherwise qualified within the state of Idaho. (3-30-07)
- 11. Lock-In Program.** An administrative sanction, required of a participant found to have misused the services provided by the Medical Assistance Program. The participant is required to select one (1) provider in the identified area(s) of misuse to serve as the primary provider. (3-30-07)
- 12. Locum Tenens/Reciprocal Billing.** The practice of a physician to retain a substitute physician when the regular physician is absent for reasons such as illness, pregnancy, vacation, or continuing medical education. The substitute physician is called the "Locum Tenens" physician. Reimbursement to a Locum Tenens physician will be limited to a period of ninety (90) continuous days. Reciprocal billing occurs when a substitute physician covers the regular physician during an absence or on an on-call basis a period of fourteen (14) continuous days or less. (3-30-07)
- 13. Medical Assistance.** Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-30-07)
- 14. Medicaid.** Idaho's Medical Assistance Program. (3-30-07)
- 15. Medicaid-Related Ancillary Costs.** For the purpose of these rules, those services considered to be ancillary by Medicare cost reporting principles. Medicaid-related ancillary costs will be determined by apportioning direct and indirect costs associated with each ancillary service to Medicaid participants by dividing Medicaid charges into total charges for that service. The resulting percentage, when multiplied by the ancillary service cost, will be considered Medicaid-related ancillaries. (3-30-07)
- 16. Medical Necessity (Medically Necessary).** A service is medically necessary if: (3-30-07)
- a.** It is reasonably calculated to prevent, diagnose, or treat conditions in the participant that endanger life, cause pain, or cause functionally significant deformity or malfunction; and (3-30-07)
  - b.** There is no other equally effective course of treatment available or suitable for the participant requesting the service which is more conservative or substantially less costly. (3-30-07)
  - c.** Medical services must be of a quality that meets professionally-recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. Those records must be made available to the Department upon request. (3-30-07)

**17. Medical Supplies.** ~~Items excluding drugs, biologicals, and equipment furnished incident to a physician's professional services commonly furnished in a physician's office or items ordered by a physician for the treatment of a specific medical condition. These items are generally not useful to an individual in the absence of an illness and are consumable, nonreusable, disposable, and generally have no salvage value. Surgical dressings, ace bandages, splints and casts, and other devices used for reduction of fractures or dislocations are considered supplies. Healthcare-related items that are consumable, disposable, or cannot withstand repeated use by more than one (1) individual, are suitable for use in any setting in which normal life activities take place, and are reasonable and medically necessary for the treatment of a disability, illness, or injury for a Medicaid participant.~~ (3-30-07)( )

**18. Medicare Durable Medical Equipment Medicare Administrative Contractor Jurisdiction D Supplier Manual (CMS/Medicare DME Coverage Manual).** A publication that is incorporated by reference in Section 004 of these rules and contains information on DME supplier enrollment, documentation, claim submission, coverage, appeals, and overpayments. ( )

**189. Midwife.** An individual qualified as one of the following: (3-29-12)

**a. Licensed Midwife.** A person who is licensed by the Idaho Board of Midwifery under Title 54, Chapter 55, Idaho Code, and IDAPA 24.26.01, "Rules of the Idaho Board of Midwifery." (3-29-12)

**b. Nurse Midwife (NM).** An advanced practice registered nurse who is licensed by the Idaho Board of Nursing and who meets all the applicable requirements to practice as a nurse midwife under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-29-12)

**190. Nominal Charges.** A public provider's charges are nominal where aggregate charges amount to less than one-half (1/2) of the reasonable cost of the services provided. (3-30-07)

**201. Nonambulatory.** Unable to walk without assistance. (3-30-07)

**212. Non-Legend Drug.** Any drug the distribution of which is not subject to the ordering, dispensing, or administering by a licensed medical practitioner. (3-30-07)

**23. Non-Physician Practitioner.** A non-physician practitioner, previously referred to as a midlevel practitioner, comprises the following practitioner types: certified registered nurse anesthetists (CRNA), nurse practitioners (NP), nurse midwives (NM), clinical nurse specialists (CNS), and physician assistants (PA), as defined in Sections 010, 011, 012 of these rules. ( )

**224. Nurse Practitioner (NP).** A registered nurse or licensed professional nurse (RN) who meets all the applicable requirements to practice as nurse practitioner under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (7-1-13)

**235. Nursing Facility (NF).** An institution, or distinct part of an institution, that is primarily engaged in providing skilled nursing care and related services for participants. It is an entity licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare participants. Participants must require medical or nursing care, or rehabilitation services for injuries, disabilities, or sickness. (3-30-07)

**246. Orthotic.** Pertaining to or promoting the support of an impaired joint or limb. (3-30-07)

**257. Outpatient Hospital Services.** Preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to a patient not in need of inpatient hospital care. (3-30-07)

**268. Out-of-State Care.** Medical service that is not provided in Idaho or bordering counties is considered out-of-state. Bordering counties outside Idaho are considered out-of-state for the purpose of authorizing long term care. (3-30-07)

**279. Oxygen-Related Equipment.** Equipment which is utilized or acquired for the routine administration of oxygen in ~~the home~~ any setting in which normal life activities take place. This includes oxygen

tanks, regulators, humidification nebulizers, oxygen concentrators, and related equipment. Equipment which is used solely for the administration of medication into the lungs is excluded from this definition. ~~(3-30-07)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. PROVIDER APPLICATION PROCESS.**

**01. Provider Application.** Providers who meet Medicaid enrollment requirements may apply for Idaho Medicaid provider status with the Department. All healthcare providers who are eligible for a National Provider Identifier (NPI) must apply using that identifying number. For providers not eligible for a NPI, the Department will assign a provider number upon approval of the application. (3-20-14)

**02. Screening Levels.** In accordance with 42 CFR 455.450, the Department will assign risk levels of “limited,” “moderate,” or “high” to defined groups of providers. These assignments and definitions will be published in the provider handbook. (3-20-14)

**03. Medicare Enrollment Requirement for Specified Providers.** The following providers must enroll as Medicare providers or demonstrate enrollment with another state’s Medicaid agency prior to enrollment or revalidation as an Idaho Medicaid provider. ~~(3-20-14)~~( )

**a.** Any providers classified in the “moderate” or “high” categorical risk level, as defined in the provider handbook. (3-20-14)

**b.** Any provider type classified as an institutional provider by Medicare. (3-20-14)

**04. Disclosure of Information by Providers and Fiscal Agents.** All enrolling providers and their fiscal agents must comply with the disclosure requirements as stated in 42 CFR 455, Subpart B, “Disclosure of Information by Providers and Fiscal Agents.” (3-20-14)

**05. Denial of Provider Agreement.** The Department may deny provider status by refusing a request to enter into a provider agreement, refusing to extend an existing agreement, or refusing to enter into additional agreements with any individual or entity. Reasons for denying provider status include those described in IDAPA 16.05.07, “The Investigation and Enforcement of Fraud, Abuse, and Misconduct,” Section 265. (3-20-14)

**06. Mandatory Denial of Provider Agreement.** The Department will deny a request for a provider agreement when: (3-20-14)

**a.** The provider fails to meet the qualifications required by rule or by any applicable licensing board; (3-20-14)

**b.** The provider was a managing employee, or had an ownership interest, as defined in 42 CFR Section 455.101, in any entity that was previously found by the Department to have engaged in fraudulent conduct, or abusive conduct related to the Medicaid program, or has demonstrated an inability to comply with the requirements related to the provider status for which application is made, including submitting false claims or violating provisions of any provider agreement; (3-20-14)

**c.** The provider was a managing employee, or had an ownership interest, as defined in 42 CFR Section 455.101, in any entity that failed to repay the Department for any overpayments, or to repay claims previously found by the Department to have been paid improperly, whether the failure resulted from refusal, bankruptcy, or otherwise, unless prohibited by law; (3-20-14)

**d.** The provider employs as a managing employee, contracts for any management services, shares any ownership interests, or would be considered a related party to any individual or entity identified in Subsections 200.06.a. through 200.06.c. of this rule. (3-20-14)

- e. The provider fails to comply with any applicable requirement under 42 CFR 455. (3-20-14)
- f. The provider is precluded from enrollment due to a temporary moratorium issued by the Secretary of Health and Human Services in accordance with 42 CFR 455.470. (3-20-14)
- g. The provider is currently suspended from Medicare or Medicaid in any state, or has been terminated from Medicare or Medicaid in any state. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**399. COVERED SERVICES UNDER BASIC PLAN BENEFITS.**

Individuals who are eligible for Medicaid Basic Plan Benefits are eligible for the following benefits, subject to the coverage limitations contained in these rules. Those individuals eligible for services under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," are also eligible for the services covered under this chapter of rules, unless specifically exempted. (5-8-09)

**01. Hospital Services.** The range of hospital services covered is described in Sections 400 through 449 of these rules. (5-8-09)

- a. Inpatient Hospital Services are described in Sections 400 through 406. (3-30-07)
- b. Outpatient Hospital Services are described in Sections 410 through 416. (3-30-07)
- c. Reconstructive Surgery services are described in Sections 420 through 426. (3-30-07)
- d. Surgical procedures for weight loss are described in Sections 430 through 436. (3-30-07)
- e. Investigational procedures or treatments are described in Sections 440 through 446. (3-30-07)

**02. Ambulatory Surgical Centers.** Ambulatory Surgical Center services are described in Sections 450 through 499 of these rules. (5-8-09)

**03. Physician Services and Abortion Procedures.** Physician services and abortion procedures are described in Sections 500 through 519 of these rules. (5-8-09)

- a. Physician services are described in Sections 500 through 506. (3-30-07)
- b. Abortion procedures are described in Sections 510 through 516. (3-30-07)

**04. Other Practitioner Services.** Other practitioner services are described in Sections 520 through 559 of these rules. (5-8-09)

- a. ~~Midlevel~~ Non-physician practitioner services are described in Sections 520 through 526. ~~(3-30-07)~~ ( )
- b. Chiropractic services are described in Sections 530 through 536. (3-30-07)
- c. Podiatrist services are described in Sections 540 through 545. (3-29-12)
- d. Licensed midwife (LM) services are described in Sections 546 through 552. (3-29-12)
- e. Optometrist services are described in Sections 553 through 556. (3-29-12)

**05. Primary Care Case Management.** Primary care case management services are described in Sections 560 through 579 of these rules. (5-8-09)

- a. Healthy Connections services are described in Sections 560 through 566. (4-4-13)
- 06. **Prevention Services.** The range of prevention services covered is described in Sections 580 through 649 of these rules. (4-4-13)
  - a. Child Wellness Services are described in Sections 580 through 586. (3-30-07)
  - b. Adult Physical Services are described in Sections 590 through 596. (3-30-07)
  - c. Screening mammography services are described in Sections 600 through 606. (3-30-07)
  - d. Diagnostic Screening Clinic services are described in Sections 610 through 614. (4-4-13)
  - e. Additional Assessment and Evaluation services are described in Section 615. (4-4-13)
  - f. Health Questionnaire Assessment is described in Section 618. (4-4-13)
  - g. Preventive Health Assistance benefits are described in Sections 620 through 626. (5-8-09)
  - h. Nutritional services are described in Sections 630 through 636. (3-30-07)
  - i. Diabetes Education and Training services are described in Sections 640 through 646. (3-30-07)
- 07. **Laboratory and Radiology Services.** Laboratory and radiology services are described in Sections 650 through 659 of these rules. (5-8-09)
- 08. **Prescription Drugs.** Prescription drug services are described in Sections 660 through 679 of these rules. (5-8-09)
- 09. **Family Planning.** Family planning services are described in Sections 680 through 689 of these rules. (5-8-09)
- 10. **Outpatient Behavioral Health Services.** Community-based outpatient services for behavioral health treatment are described in Sections 707 through 711 of these rules. (3-20-14)
- 11. **Inpatient Psychiatric Hospital Services.** Inpatient Psychiatric Hospital services are described in Sections 700 through 706. (3-20-14)
- 12. **Home Health Services.** Home health services are described in Sections 720 through 729 of these rules. (5-8-09)
- 13. **Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are described in Sections 730 through 739 of these rules. (5-8-09)
- 14. **Audiology Services.** Audiology services are described in Sections 740 through 749 of these rules. (5-8-09)
- 15. **Durable Medical Equipment and Supplies.** The range of covered durable medical equipment and supplies is described in Sections 750 through 779 of these rules. (5-8-09)
  - a. Durable Medical Equipment and supplies are described in Sections 750 through 756. (3-30-07)
  - b. Oxygen and related equipment and supplies are described in Sections 760 through 766. (3-30-07)
  - c. Prosthetic and orthotic services are described in Sections 770 through 776. (3-30-07)

- 16. Vision Services.** Vision services are described in Sections 780 through 789 of these rules. (5-8-09)
- 17. Dental Services.** The dental services covered under the Basic Plan are covered under a selective contract as described in Section 800 through 819 of these rules. (3-29-12)
- 18. Essential Providers.** The range of covered essential services is described in Sections 820 through 859 of these rules. (5-8-09)
- a.** Rural health clinic services are described in Sections 820 through 826. (3-30-07)
- b.** Federally Qualified Health Center services are described in Sections 830 through 836. (3-30-07)
- c.** Indian Health Services Clinic services are described in Sections 840 through 846. (3-30-07)
- d.** School-Based services are described in Sections 850 through 857. (3-20-14)
- 19. Transportation.** The range of covered transportation services is described in Sections 860 through 879 of these rules. (5-8-09)
- a.** Emergency transportation services are described in Sections 860 through 866. (3-30-07)
- b.** Non-emergency medical transportation services are described in Sections 870 through 876. (4-4-13)
- 20. EPSDT Services.** EPSDT services are described in Sections 880 through 889 of these rules. (5-8-09)
- 21. Specific Pregnancy-Related Services.** Specific pregnancy-related services are described in Sections 890 through 899 of these rules. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**455. AMBULATORY SURGICAL CENTER SERVICES: PROVIDER REIMBURSEMENT.**

- 01. Payment Methodology.** ASC services reimbursement is designed to pay for use of facilities and supplies necessary to safely care for the patient. Such services are reimbursed as follows: (3-30-07)
- a.** ASC service payments represent reimbursement for the costs of goods and services recognized by the Medicare program as described in 42 CFR, Part 416. Payment levels will be determined by the Department. Any surgical procedure covered by the Department, but which is not covered by Medicare will have a reimbursement rate established by the Department. (3-30-07)
- b.** ASC services include the following: (3-30-07)
- i.** Nursing, technician, and related services; (3-30-07)
- ii.** Use of ASC facilities; (3-30-07)
- iii.** Drugs, biologicals, surgical dressings, supplies, splints, casts, and appliances and equipment directly related to the provision of surgical procedures; (3-30-07)
- iv.** Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure; (3-30-07)
- v.** Administration, record-keeping and housekeeping items and services; and (3-30-07)

- vi. Materials for anesthesia. (3-30-07)
  - c. ASC services do not include the following services: (3-30-07)
    - i. Physician services; (3-30-07)
    - ii. Laboratory services, x-ray or diagnostic procedures (other than those directly related to the performance of the surgical procedure); (3-30-07)
    - iii. Prosthetic and orthotic devices; (3-30-07)
    - iv. Ambulance services; (3-30-07)
    - v. Durable medical equipment for use in the patient's home typically used in the participant's place of residence, but may be suitable for use in any setting in which normal life activities take place, other than a hospital, nursing facility, or ICF/ID; and ~~(3-30-07)~~( )
    - vi. Any other service not specified in Subsection 455.01.b. of this rule. (3-30-07)
- 02. Payment for Ambulatory Surgical Center Services.** Payment is made at a rate established in accordance with Section 230 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**522. ~~MIDLEVEL~~ NON-PHYSICIAN PRACTITIONER SERVICES: COVERAGE AND LIMITATIONS.**  
The Medicaid Program will pay for services provided by certified registered nurse anesthetists (CRNA), nurse practitioners (NP), nurse midwives (NM), clinical nurse specialists (CNS), and physician assistants (PA), as defined in Sections 010, 011, 012 of these rules and in accordance with the provisions found under Sections 523 through 525 of these rules. ~~(3-30-07)~~( )

**523. (RESERVED)**

**524. ~~MIDLEVEL~~ NON-PHYSICIAN PRACTITIONER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Identification of Services.** The required services must be covered under the legal scope of practice as identified by the appropriate State rules of the CRNA, NP, NM, CNS, or PA. ~~(3-30-07)~~( )

**02. Deliverance of Services.** The services must be delivered under physician supervision, if required by Idaho Statute. (3-30-07)

**525. ~~MIDLEVEL~~ NON-PHYSICIAN PRACTITIONER SERVICES: PROVIDER REIMBURSEMENT.**

**01. Billing of Services.** Billing for the services must be as provided by the CRNA, NP, NM, CNS, or PA, and not represented as a physician service. ~~(3-30-07)~~( )

**02. Payments Made Directly to CRNA.** Payments under the fee schedule must be made directly to the CRNA under the individual provider number assigned to the CRNA. Rural hospitals that qualify for a Medicare exception and employ or contract CRNAs may be reimbursed on a reasonable cost basis. (3-30-07)

**03. Reimbursement Limits.** The Department will reimburse for each service to be delivered by the NP, NM, CNS, or PA as either the billed charge or reimbursement limit established by the Department, whichever is less. ~~(3-30-07)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**546. LICENSED MIDWIFE (LM) SERVICES.**

The Department will reimburse licensed midwives for maternal and newborn services performed within the scope of their practice. This section of rules does not include ~~midlevel non-physician~~ practitioner services provided by a nurse midwife (NM) which are described in Sections 522 through 525 of these rules. ~~(3-29-12)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**720. HOME HEALTH SERVICES: DEFINITIONS.**

~~Home health services encompass services ordered by the participant's attending physician as a part of a plan of care, that include nursing services, home health aide, physical therapy, occupational therapy, and speech-language pathology services.~~ ~~(4-2-08)~~

**01. Home Health Plan of Care.** A written description of home health services to be provided to a participant. ( )

**02. Home Health Services.** Home health services are services and items, including nursing services, home health aide services, physical therapy, occupational therapy, speech-language pathology services, audiology services, and medical supplies, equipment, and appliances that are: ( )

**a.** Ordered by a physician as part of a home health plan of care; ( )

**b.** Performed by a licensed, qualified professional acting within their authorized scope of practice; ( )

**c.** Typically received by a participant at the participant's place of residence, but may be received in any setting in which normal life activities take place, other than a hospital, nursing facility, ICF/ID (unless such services are not otherwise required to be provided by the ICF/ID), or any other setting in which payment is made, or could be made, under Medicaid for inpatient services that include room and board; and ( )

**d.** Reasonable and medically necessary for the treatment of a disability, illness, or injury for a Medicaid participant. ( )

**03. Place of Residence.** For the purposes of home health services, generally any setting in which a participant makes their home, other than a hospital, nursing facility, or ICF/ID. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**723. HOME HEALTH SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Physician Orders.** ( )

**a.** Home health services must be ordered by a physician. Such orders must include at a minimum, the physician's National Provider Identifier (NPI), the services or items to be provided, the frequency, and, where applicable, the expected duration of time for which the home health services will be needed. ( )

**b.** In the event that home health services are required for extended periods, these services must be reordered as necessary, but at least every sixty (60) days for services and at least annually for medical supplies, equipment, and appliances. ( )



**02. Face-to-Face Encounter for Home Health Services -- Excluding Medical Supplies, Equipment, and Appliances.** ( )

**a.** For the initiation of home health services, excluding medical supplies, equipment, and appliances, the participant's physician must document that a face-to-face encounter that is related to the primary reason the patient requires home health services occurred with the participant no more than ninety (90) days before, or thirty (30) days after, the start of the home health services. Appropriate documentation must indicate the practitioner who conducted the encounter, and the date of the encounter as described in the CMS/Medicare DME coverage manual.

 ( )

**b.** The face-to-face encounter may occur via telehealth, as defined in Title 54, Chapter 57, Idaho Code. ( )

**c.** The face-to-face encounter may be performed by participant's physician, including an attending acute or post-acute physician, or one (1) of the following non-physician practitioners (NPP): ( )

**i.** A nurse practitioner or clinical nurse specialist working in collaboration with the ordering physician; ( )

**ii.** A nurse midwife; or ( )

**iii.** A physician assistant under the supervision of the ordering physician. ( )

**d.** If the face-to-face encounter is performed by an allowed NPP, the NPP must communicate the clinical findings of that face-to-face encounter to the ordering physician. ( )

**03. Face-to-Face Encounter for Home Health Medical Supplies, Equipment, and Appliances.** ( )

**a.** For the initiation of home health medical supplies, equipment, and appliances, the participant's physician, or a non-physician practitioner as authorized in Subsection 723.03 of this rule, must document that a face-to-face encounter that is related to the primary reason the patient requires medical supplies, equipment, and appliances, occurred with the participant no more than six (6) months before the start of services. Appropriate documentation must indicate the practitioner who conducted the encounter, and the date of the encounter as described in the CMS/Medicare DME coverage manual.

 ( )

**b.** The face-to-face encounter may occur via telehealth, as defined in Title 54, Chapter 57, Idaho Code. ( )

**c.** The face-to-face encounter may be performed by participant's physician, including an attending acute or post-acute physician, or one of the following non-physician practitioners (NPP): ( )

**i.** A nurse practitioner or clinical nurse specialist working in collaboration with the ordering physician; or ( )

**ii.** A physician assistant under the supervision of the ordering physician. ( )

**d.** If the face-to-face encounter is performed by an allowed NPP, the NPP must communicate the clinical findings of that face-to-face encounter to the ordering physician. ( )

**04. Home Health Plan of Care Review.** ( )

**a.** All home health services must be provided under a home health plan of care that is established prior to beginning treatment. The home health plan of care must be signed by the licensed, qualified professional who established the plan and must contain the information required under IDAPA 16.03.07, "Rules for Home Health Agencies." ( )

**b.** All home health plans of care must be reviewed by the participant's physician as necessary, but at least every sixty (60) days; ~~and for services, and at least annually for medical supplies, equipment, and appliances.~~ (3-30-07)( )

~~**02. Review for Necessity.** The need for medical supplies and equipment ordered by the participant's physician as required in the care of the participant and suitable for use in the home must be reviewed at least once every sixty (60) days.~~ (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**725. HOME HEALTH SERVICES: PROVIDER REIMBURSEMENT.**

**01. Mileage Included in Cost.** Payment by the Department for home health services will include mileage as part of the cost of the visit. (3-30-07)

**02. Payment Procedures.** Payment for home health services will be limited to the services authorized in Sections 720 through 722 of these rules and must not exceed the lesser of reasonable cost as determined by Medicare or the Medicaid percentile cap. (3-30-07)

**a.** For visits performed in the first state fiscal year for which this Subsection is in effect, the Medicaid percentile cap will be established at the seventy fifth percentile of the ranked costs per visit as determined by the Department using the data from the most recent finalized Medicare cost reports on hand in the Department on June 1, 1987. Thereafter, the percentile cap will be revised annually, effective at the beginning of each state fiscal year. Revisions will be made using the data from the most recent finalized Medicare cost reports on hand thirty (30) days prior to the effective date. (3-30-07)

**b.** When determining reasonable costs of rented medical equipment ordered by a physician and used for the care of the participant, the total rental cost of a Durable Medical Equipment (DME) item must not exceed one-~~twelfth~~ tenth (1/1~~2~~0) of the total purchase price of the item. A minimum rental rate of fifteen dollars (\$15) per month is allowed on all DME items. (3-30-07)( )

**c.** The Department may enter into lease/purchase agreements with providers in order to purchase medical equipment when the rental charges total the purchase price of the equipment. (3-30-07)

**d.** The Department will not pay for services at a cost in excess of prevailing Medicare rates. (3-30-07)

**e.** If a person is eligible for Medicare, all services ordered by the physician will be purchased by Medicare, except for the deductible and co-insurance amounts which the Department will pay. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**732. THERAPY SERVICES: COVERAGE AND LIMITATIONS.**

Therapy services are covered under these rules when delivered by a therapy professional and provided by one (1) of the following providers: outpatient hospitals, outpatient rehabilitation facilities, comprehensive outpatient rehabilitative facilities, nursing facilities, school-based services, Idaho Infant Toddler Program, independent practitioners, and home health agencies. Therapy services provided by a home health agency under a home health plan of care must meet the requirements found in Sections 730 through 739 of these rules, and the requirements found in Sections 720 through 729 of these rules. (7-1-16)( )

**01. Service Description: Occupational Therapy and Physical Therapy.** Modalities, therapeutic procedures, tests, and measurements as described in the Physical Medicine and Rehabilitation Subsection and the Neurology and Neuromuscular Procedures Subsection of the Physician's Current Procedural Terminology (CPT

Manual) are covered with the following limitations: (4-2-08)

**a.** Any evaluation or re-evaluation may only be performed by the therapist. Any changes in the participant's condition not consistent with planned progress or treatment goals necessitate a documented re-evaluation by the therapist before further treatment is carried out. (4-2-08)

**b.** Any CPT procedure code that falls under the heading of either, "Active Wound Care Management," or "Tests and Measurements," requires the therapist to have direct, one-to-one, patient contact. (4-2-08)

**c.** The therapist may be reimbursed for the technical component of muscle testing, joint range of motion, electromyography, or nerve velocity determinations as described in the CPT Manual when ordered by a physician, nurse practitioner, or physician assistant. (4-2-08)

**d.** Any assessment provided under the heading "Orthotic Management and Prosthetic Management" must be completed by the therapist. (4-2-08)

**e.** Any modality that is defined as "unlisted" in the CPT Manual requires prior authorization by the Department. In this case, the therapist and the physician, nurse practitioner, or physician assistant must provide information in writing to the Department that documents the medical necessity of the modality requested. (4-2-08)

**f.** The services of occupational or physical therapy assistants used when providing covered therapy benefits are included as part of the covered service. These services are billed by the supervising therapist. Therapy assistants may not provide evaluation services, make clinical judgments or decisions, or take responsibility for the service. The therapist has full responsibility for the service provided. Therapy assistants act at the direction and under the supervision of the treating therapist and in accordance with state licensure rules. (7-1-16)

**02. Service Description: Speech-Language Pathology.** Speech-language pathology services must be provided as defined in Section 730 of these rules. Services provided by speech-language pathology aides and assistants are considered unskilled services, and will be denied as not medically necessary if they are billed as speech-language pathology services. (7-1-16)

**03. Non-Covered Services: Occupational Therapy, Physical Therapy, and Speech-Language Pathology.** (4-2-08)

**a.** Continuing services for participants who do not exhibit the capability to achieve measurable improvement and who do not meet the criteria for a maintenance program. (7-1-16)

**b.** Services that address developmentally acceptable error patterns. (4-2-08)

**c.** Services that do not require the skills of a therapy professional. (7-1-16)

**d.** Massage, work hardening, and conditioning. (4-2-08)

**e.** Services that are not medically necessary, as defined in Section 011 of these rules. (4-2-08)

**f.** Duplicate services, as defined under Section 730 of these rules. (4-2-08)

**g.** Group therapy in settings other than school-based services and the Idaho Infant Toddler Program. (7-1-13)

**h.** Acupuncture (with or without electrical stimulation). (7-1-16)

**i.** Biofeedback, unless provided to treat urinary incontinence. (7-1-16)

**j.** Duplicate Services. (7-1-16)

**k.** Services that are considered to be experimental or investigational. (7-1-16)

**l.** Vocational Program. (7-1-16)

**m.** Vision Therapy. (7-1-16)

**04. Service Limitations.** (4-2-08)

**a.** Physical therapy (PT) and speech-language pathology (SLP) services are limited to a combined annual dollar amount for all PT and SLP services. The Department will set the total amount based on the annual Medicare caps. The Department may authorize additional therapy services, when the services are determined to be medically necessary and supporting documentation is provided ~~to~~ upon request of the Department. ~~(3-29-12)~~ ( )

**b.** Occupational therapy services are limited to an annual dollar amount set by the Department based on the annual Medicare caps. The Department may authorize additional therapy services, when the services are determined to be medically necessary and supporting documentation is provided ~~to~~ upon request of the Department. ~~(3-29-12)~~ ( )

**c.** Exceptions to service limitations. (3-29-12)

**i.** Therapy provided by home health agencies is subject to the limitations on home health services contained in Section 722 of these rules. (3-29-12)

**ii.** Therapy provided through school-based services or the Idaho Infant Toddler Program is not included in the service limitations under Subsection 732.04 of this rule. (7-1-13)

**iii.** Therapy provided to EPSDT participants under the age of twenty-one (21) in accordance with the EPSDT requirements contained in Sections 881 through 883 of these rules, and in Section 1905(r) of the Social Security Act, will be authorized by the Department when additional therapy services are medically necessary. (3-29-12)

**d.** Feeding therapy services are covered for children with a diagnosed feeding disorder that results in a clinically significant deviation from normal childhood development. The provider of feeding therapy is an occupational therapist or speech therapist with training specific to feeding therapy. (7-1-16)

**e.** Maintenance therapy is covered when an individualized assessment of the participant's condition demonstrates that skilled care is required to carry out a safe and effective maintenance program. (7-1-16)

**f.** Telehealth modalities are covered to the extent they are allowed under the rules of the applicable board of licensing. The Department will define limitations on telehealth in the provider handbook to promote quality services and program integrity. (7-1-16)

**733. THERAPY SERVICES: PROCEDURAL REQUIREMENTS.**

The Department will pay for therapy services rendered by a therapy professional if such services are ordered by a physician, nurse practitioner, or physician assistant as part of a plan of care. (7-1-16)

**01. Physician Orders.** (4-2-08)

**a.** All therapy must be ordered by a physician, nurse practitioner, or physician assistant. Such orders must include at a minimum, the service to be provided, the frequency, and, where applicable, the expected duration of time for which the therapy will be needed. If the initial order is to evaluate and treat, but does not specify at least the type of service ordered and the frequency, then: (7-1-16)

**i.** The therapist may perform a therapy evaluation based on the initial physician order for the evaluation; and (7-1-16)

**ii.** The therapist must then develop a therapy plan of care based on that evaluation and send the plan to the ordering physician, nurse practitioner, or physician assistant and begin care; and (7-1-16)

iii. The physician, nurse practitioner, or physician assistant must either sign an order specifying the service to be provided, the frequency and the duration, or they must sign the therapy plan of care that includes that information within thirty (30) days for therapy to continue. No claims may be billed until the complete order or the plan of care is signed by the physician, nurse practitioner, or physician assistant. (7-1-16)

b. In the event that services are required for extended periods, these services must be reordered as necessary, but at least every ninety (90) days for all participants with the following exceptions: (5-8-09)

i. Therapy provided by home health agencies must be included in the home health plan of care and be reordered at least every sixty (60) days. (4-2-08)

ii. Therapy for individuals with long-term medical conditions, as documented by physician, nurse practitioner, or physician assistant, must be reordered at least every three hundred sixty-five (365) days. (7-1-16)

c. Therapy services provided under a home health plan of care must comply with the physician order requirements in Section 723 of these rules. ( )

**02. Level of Supervision.** Supervision of physical therapist assistants and occupational therapist assistants by the physical therapist or occupational therapist must be done according to the rules of the applicable licensure board. (7-1-16)

**03. Face-to-Face Encounter for Home Health Therapy Services.** Therapy services provided under a home health plan of care must comply with the face-to-face encounter requirements in Section 723 of these rules. ( )

**034. Therapy Plan of Care.** All therapy ~~is~~ services must be provided under a therapy plan of care that is established prior to beginning treatment. ( )

a. The plan of care must be signed by the person who established the plan. ( )

b. The plan of care must be consistent with the therapy evaluation and must contain, at a minimum: ~~(7-1-16)~~ ( )

~~a~~i. Diagnoses; (7-1-16)

~~b~~ii. Treatment goals that are measurable and pertain to the identified functional impairment(s); and (7-1-16)

~~c~~iii. Type, frequency, and duration of therapy services. (7-1-16)

c. Therapy services provided under a home health plan of care must comply with the home health plan of care requirements in Section 723 of these rules. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**742. AUDIOLOGY SERVICES: COVERAGE AND LIMITATIONS.**

All audiology services must be ordered by a physician or ~~midlevel~~ non-physician practitioner. The Department will pay for routine audiometric examination and testing once in each calendar year, and audiometric services and supplies in accordance with the following guidelines and limitations: ~~(3-29-12)~~ ( )

**01. Non-Implantable Hearing Aids.** When there is a documented hearing loss of at least thirty (30) decibels based on the standard Pure Tone Average (500, 1000, 2000 hertz), the Department will cover the purchase of non-implantable hearing aids for participants under the age of twenty-one (21) with the following requirements and limitations: (3-29-12)

a. Covered services included with the purchase of the hearing aid include proper fitting and refitting of the ear mold or aid, or both, during the first year, instructions related to the aid's use, and extended insurance coverage for two (2) years. (3-30-07)

b. The following services may be covered in addition to the purchase of the hearing aid for participants under the age of twenty-one (21): batteries purchased on a monthly basis, follow-up testing, necessary repairs resulting from normal use after the second year, and the refitting of the hearing aid or additional ear molds no more often than forty-eight (48) months from the last fitting. (3-29-12)

c. Lost, misplaced, stolen or destroyed hearing aids are the responsibility of the participant. The Department has no responsibility for the replacement of any hearing aid. In addition, the Department has no responsibility for the repair of hearing aids that have been damaged as a result of neglect, abuse or use of the aid in a manner for which it was not intended. (3-30-07)

**02. Implantable Hearing Aids.** The Department may cover a surgically implantable hearing aid for participants under the age of twenty-one (21) when: (3-29-12)

a. There is a documented hearing loss as described in Subsection 742.01 of this rule; (4-2-08)

b. Non-implantable options have been tried, but have not been successful; and (4-2-08)

c. The Department has determined that a surgically implanted hearing aid is medically necessary through the prior authorization process. The Department will consider the guidelines of private and public payers, evidence-based national standards or medical practice, and the medical necessity of each participant's case. (3-29-12)

**03. Provider Documentation Requirements.** The following information must be documented and kept on file by the provider: (4-2-08)

a. The participant's diagnosis; (4-2-08)

b. The results of the basic comprehensive audiometric exam which includes pure tone, air and bone conduction, speech reception threshold, most comfortable loudness, discrimination and impedance testing; and (4-2-08)

c. The brand name and model type of the hearing aid needed. (4-2-08)

**04. Allowance to Waive Impedance Test.** The Department will allow a medical doctor to waive the impedance test based on his documented judgment. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**751. DURABLE MEDICAL EQUIPMENT AND SUPPLIES: PARTICIPANT ~~ELIGIBILITY~~ RESPONSIBILITY.**

The participant has a responsibility to reasonably protect and preserve equipment issued to him. Replacement of medical equipment or supplies that are lost, damaged or broken due to participant misuse or abuse are the responsibility of the participant. (3-30-07)( )

**752. DURABLE MEDICAL EQUIPMENT AND SUPPLIES: COVERAGE AND LIMITATIONS.**

The Department will purchase or rent, when medically necessary, reasonable, and cost-effective, durable medical equipment (DME) and medical supplies ~~for participants residing in community settings including those provided by qualified home health providers under home health agency plans of care that meet the requirements found in Sections 720 through 724 of these rules~~ that are suitable for use in any setting in which normal life activities take place. Medical supplies, equipment, and appliances provided by a home health agency under a home health plan of care must meet the requirements found in Sections 750 through 779 of these rules and the requirements found in Sections

720 through 729 of these rules.

(3-30-07)( )

**01. Medical Necessity Criteria -- Equipment and Supplies.** Department standards for medical necessity are those national standards set by Centers for Medicare and Medicaid Services (CMS) in the Medicare DME MAC Jurisdiction D Supplier Manual CMS/Medicare DME coverage manual. Exceptions to Medicare coverage are ~~contained in Section 752 of this chapter of rules. DME/medical supplies will be purchased or rented only if ordered in writing (signed and dated) by a physician as listed in the Medicare DME MAC Jurisdiction D Supplier Manual. Date of delivery is considered the date of service. The following information to support the medical necessity of the item(s) must be included in the physician's order and accompany all requests for prior authorization or be kept on file with the DME provider for items that do not require prior authorization:~~ described in the Idaho Medicaid Provider Handbook available at: [www.idmedicaid.com](http://www.idmedicaid.com). Items for convenience, comfort, or cosmetic reasons are not covered. (3-30-07)( )

~~a. The participant's medical diagnosis including current information on the medical condition which requires the use of the supplies and/or medical equipment; and (3-30-07)~~

~~b. An estimate of the time period that the medical equipment or supply item will be necessary and frequency of use. As needed (PRN) orders must include the conditions for use and the expected frequency; and (3-30-07)~~

~~c. For medical equipment, a full description of the equipment needed. All modifications or attachments to basic equipment must be supported; and (3-30-07)~~

~~d. For medical supplies, the type and quantity of supplies necessary must be identified; and (3-30-07)~~

~~e. Documentation of the participant's medical necessity for the item, that meets coverage criteria in the CMS/Medicare DME coverage manual. (3-30-07)~~

~~f. Additional information may be requested by the Department for specific equipment and/or supplies such as, but not limited to, wheelchairs, apnea monitors, oximeters, hospital beds or equipment for which CMS/Medicare has established no coverage criteria. (3-30-07)~~

~~g. Items for convenience, comfort or cosmetic reasons are not covered. (3-30-07)~~

**02. Prior Authorization -- Equipment and Supplies.** ( )

a. Unless otherwise specified by the Department in the provider handbook, durable medical equipment and medical supplies require prior authorization by the Department. ( )

b. Each request for prior authorization must include all medical necessity documentation required under Section 753 of these rules. ( )

c. The Medicaid fee schedule that identifies medical supplies, equipment, and appliances commonly ordered for Medicaid participants, is not a comprehensive list of all medical supplies, equipment, and appliances available to Medicaid participants. If a participant requires an item that is not listed on the fee schedule, a request may be submitted to the Department to assess items for coverage. This request must include justification of the medical necessity, amount of, and duration for the item or service. ( )

**023. Coverage Conditions -- Equipment.** Medical equipment is subject to coverage limitations in the CMS/Medicare DME coverage manual. ~~Additional documentation requirements or coverage beyond those in the CMS/Medicare DME coverage manual include:~~ Exceptions to these coverage conditions and coverage conditions for medically necessary equipment not included in that manual are described in the Idaho Medicaid Provider Handbook available at: [www.idmedicaid.com](http://www.idmedicaid.com). Exceptions must be established using evidence-based or best clinical practice standards as determined by the Department. (3-30-07)( )

~~a. Wheelchairs. The Department will provide the least costly wheelchair that is appropriate to meet the participant's medical needs. Wheelchair rental or purchase requires prior authorization by the Department.~~



~~(3-30-07)~~

~~i. In addition to the physician's information, each request for purchase of a wheelchair must be accompanied by a written evaluation by a physical therapist or an occupational therapist. The evaluation must include documentation of the appropriateness and cost effectiveness of the specific wheelchair and all modifications and/or attachments and its ability to meet the participant's long-term medical needs. For each request for a rental of a wheelchair, a physical therapist or an occupational therapist evaluation may be required on a case-by-case basis, to be determined by the Department;~~

~~(3-30-07)~~

~~ii. Additional wheelchairs or seating systems may be considered within the five (5) year limitation with written documentation from the physician and a written evaluation from a physical therapist or an occupational therapist indicating the reason the current wheelchair no longer meets the participant's medical needs and cannot be modified to meet the participant's needs. All documentation required for a wheelchair or seating system purchase is required.~~

~~(3-30-07)~~

~~b. Semi-electric hospital beds must be prior authorized by the Department and will be approved only when the physician documents that the participant meets the criteria set by the CMS/Medicare DME coverage manual and the participant lives in an independent living situation where there is no one available to provide assistance with a manual bed a major portion of the day.~~

~~(3-30-07)~~

~~e. Communication devices will be considered for purchase by the Department under the following conditions:~~

~~(3-30-07)~~

~~i. The need for the device must be based on a comprehensive history and physical.~~

~~(3-30-07)~~

~~ii. The individual must lack the ability to communicate needs with the primary care physician or caregiver.~~

~~(3-30-07)~~

~~iii. If the individual knows sign language or is capable of learning sign language a communication device would not be considered medically necessary.~~

~~(3-30-07)~~

~~iv. The assessment and evaluation for the communication device must include comprehensive information as related to the individual's ability to communicate and review of the most cost effective devices to meet the individual's needs. Documentation must include:~~

~~(3-30-07)~~

~~(1) Demographic and biographic summary;~~

~~(3-30-07)~~

~~(2) Inventory of skills and sensory function;~~

~~(3-30-07)~~

~~(3) Inventory of present and anticipated future communication needs;~~

~~(3-30-07)~~

~~(4) Summary of device options;~~

~~(3-30-07)~~

~~(5) Recommendation for device; and~~

~~(3-30-07)~~

~~(6) Copy of individual treatment plan.~~

~~(3-30-07)~~

~~v. Repairs to the device must be prior authorized and must not include modifications, technological improvements or upgrades.~~

~~(3-30-07)~~

~~vi. Reimbursable supplies include rechargeable batteries, overlays, and symbols.~~

~~(3-30-07)~~

~~vii. The use or provision of the system by any individual other than the participant for which the system was authorized is prohibited~~

~~(3-30-07)~~

~~viii. Training and orientation in the use of the communication device may be billed as speech language pathology services by Medicaid providers of speech language pathology services.~~

~~(4-2-08)~~



- ~~d. Maternity abdominal supports will be covered if the participant has: (3-30-07)~~
- ~~i. Vulvular varicosities; (3-30-07)~~
- ~~ii. Perineal edema; (3-30-07)~~
- ~~iii. Lymphedema; (3-30-07)~~
- ~~iv. External prolapse of the uterus or bladder; (3-30-07)~~
- ~~v. Hip separation; (3-30-07)~~
- ~~vi. Pubic symphysis separation; or (3-30-07)~~
- ~~vii. Severe abdominal or back strain. (3-30-07)~~
- ~~e. Apnea monitor when there is one (1) or more documented apneic episodes in the previous two (2) months. (4-2-08)~~
- 034. ~~Medical Supply Program Requirements~~ Coverage Conditions -- Supplies. ( )**
- a.** The Department will purchase no more than a one (1) month supply of necessary medical supplies per ~~calendar~~ month for the treatment or amelioration of a medical condition identified by the attending physician. ~~Limitations for supplies follow the CMS/Medicare DME coverage manual.~~ Supplies in excess of ~~those~~ the limitations in the CMS/Medicare DME coverage manual must be prior authorized by the Department. (3-30-07)( )
- b.** Medical supplies are subject to the coverage limitations in the CMS/Medicare DME coverage manual. Exceptions to these coverage conditions and coverage conditions for medically necessary supplies not included in that manual are described in the Idaho Medicaid Provider Handbook available at: [www.idmedicaid.com](http://www.idmedicaid.com). Exceptions must be established using evidence-based or best clinical practice standards as determined by the Department. ( )
- ~~a. Each request for prior authorization must include all information required in Subsection 752.01 of this rule. (3-30-07)~~
- ~~b. Supplies other than those listed below will require prior authorization: (3-30-07)~~
- ~~i. Catheter supplies including catheters, drainage tubes, collection bags, and other incidental supplies; (3-30-07)~~
- ~~ii. Cervical collars; (3-30-07)~~
- ~~iii. Colostomy and/or urostomy supplies; (3-30-07)~~
- ~~iv. Cotton tip applicators; (3-30-07)~~
- ~~v. Disposable supplies necessary to operate Department approved medical equipment such as suction catheters, syringes, saline solution, etc.; (3-30-07)~~
- ~~vi. Dressings and bandages to treat wounds, burns, or provide support to a body part; (3-30-07)~~
- ~~vii. Fluids for irrigation; (3-30-07)~~
- ~~viii. Incontinence supplies (See Subsection 752.04.b. of this rule for limitations); (3-30-07)~~
- ~~ix. Injectable supplies including normal saline and Heparin but excluding all other prescription drug~~

items; (3-30-07)

and x. Blood glucose or urine glucose checking/monitoring materials (tablets, tapes, strips, etc.), lancets; (3-30-07)

xi. Therapeutic drug level home monitoring kits. (3-30-07)

xii. Oral, enteral, or parenteral nutritional products, see Subsection 752.04.a. of this rule additional documentation requirements. (3-30-07)

**04. Coverage Conditions – Supplies.** Medical supplies are covered when medical necessity criteria per the CMS/Medicare DME coverage manual or the following medical supply items are subject to the following limitations and additional documentation requirements: (3-30-07)

**a. Nutritional products.** Nutritional products will be purchased for participants who meet the CMS/Medicare DME coverage manual criteria, when the supplement is given by tube feeding or orally to meet caloric needs of the participant who cannot maintain growth, weight, and strength commensurate with his general condition from traditional foods alone. (3-30-07)

i. A nutritional plan must be developed and be on file with the provider and must include appropriate nutritional history, the participant's current height, weight, age and medical diagnosis. For participants under the age of twenty-one (21), a growth chart including weight/height percentile must be included; (3-30-07)

ii. The plan must include goals for either weight maintenance and/or weight gain and must outline steps to be taken to decrease the participant's dependence on continuing use of nutritional supplements; (3-30-07)

iii. Documentation of evaluation and updating of the nutritional plan and assessment by a physician as needed but at least annually. (3-30-07)

**b. Incontinent supplies.** Incontinent supplies are covered for persons over four (4) years of age only and do not require prior authorization unless the participant needs supplies in excess of the following limitations: (3-30-07)

i. Diapers are restricted in number to two hundred forty (240) per month. If the physician documents that additional diapers are medically necessary, the Department may authorize additional amounts on an individual basis. (3-30-07)

ii. Disposable underpads are restricted to one hundred fifty (150) per month. (3-30-07)

iii. Pullups, for participants between the ages of four (4) and twenty-one (21), are only allowed when the participant is participating in a formal toilet training program written by an Occupational Therapist, Qualified Intellectual Disabilities Professional (QIDP), or Developmental Specialist. Documentation for toilet training program must be updated on a yearly basis. (4-2-08)

## 753. DURABLE MEDICAL EQUIPMENT AND SUPPLIES: PROCEDURAL REQUIREMENTS.

**01. Medical Equipment Program Requirements Physician Orders.** All claims for durable medical equipment are subject to the following guidelines: (3-30-07)( )

**a.** Unless specified by the Department, durable medical equipment requires prior authorization by the Department. All medical supplies, equipment, and appliances must be ordered by a physician. Such orders must meet the requirements described in the CMS/Medicare DME coverage manual. (3-30-07)( )

**b.** Date of delivery is considered the date of service. ( )

**c.** In the event that medical equipment and supplies are required for extended periods, these must be reordered as necessary, but at least annually, for all participants. ( )

d. The following information to support the medical necessity of the item(s) must be included in the physician's order and accompany all requests for prior authorization, or be kept on file with the DME provider for items that do not require prior authorization: ( )

i. The participant's medical diagnosis, including current information on the medical condition which requires the use of the supplies or medical equipment, or both: ( )

ii. An estimate of the time period that the medical equipment or supply item will be necessary and frequency of use. As needed (PRN) orders must include the conditions for use and the expected frequency: ( )

iii. For medical equipment, a full description of the equipment needed. All modifications or attachments to the basic equipment must be supported: ( )

iv. For medical supplies, the type and quantity of supplies necessary must be identified; and ( )

v. Documentation of the participant's medical necessity for the item, that meets coverage criteria in the CMS/Medicare DME coverage manual. ( )

vi. Additional information may be requested by the Department for specific equipment or supplies, or both, including equipment for which CMS/Medicare has established no coverage criteria. ( )

**02. Face-to-Face Encounter for Home Health Medical Supplies, Equipment, and Appliances.**  
Medical supplies, equipment, and appliances provided under a home health plan of care must comply with the face-to-face encounter requirements in Section 723 of these rules. ( )

**03. Plan of Care Requirements for Home Health Medical Supplies, Equipment, and Appliances.**  
Medical supplies, equipment, and appliances provided under a home health plan of care must comply with the home health plan of care requirements in Section 723 of these rules. ( )

**04. Prior Authorizations. ( )**

a. Prior authorization means a written, faxed, or electronic approval from the Department that permits payment or coverage of a medical item or service that is covered only by such authorization. ( )

i. Medicaid payment will be denied for the medical item or service or portions thereof which were provided prior to the submission of a valid prior authorization request. ( )

ii. The provider may not bill the Medicaid participant for services not reimbursed by Medicaid solely because the authorization was not requested or obtained in a timely manner. An exception may be allowed on a case-by-case basis where, despite diligent efforts on the part of the provider to submit a request, or events beyond the provider's control prevented it. ( )

b. An item or service will be deemed prior approved where the individual to whom the service was provided was not eligible for Medicaid at the time the service was provided, but was subsequently found eligible pursuant to IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled," and the medical item or service provided is approved by the Department by the same guidance that applies to other prior authorization requests. (3-30-07)( )

c. A valid prior authorization request is a written, faxed, or electronic request from a provider of Medicaid for services that contains all information and documentation as required by these rules to justify the medical necessity, amount of and duration for the item or service. (3-30-07)

**05. Notification of Changes to Prior Authorization Requirements.**  
The Department will provide sixty (60) days notice of any substantive and significant changes to requirements for prior authorization in its provider handbook. The Department will provide a method to allow providers to provide input and comment on proposed changes. ( )

**06. Equipment Rental -- Purchase Procedures.** Unless specified by the Department, all equipment must be rented except when it would be more cost effective to purchase it. Rentals are subject to the following guidelines: (3-30-07)( )

**a.** Rental payments, including intermittent payments, are to be automatically applied to the purchase of the equipment. (3-30-07)

**b.** The Department may choose to continue to rent certain equipment without purchasing it. Such items include apnea monitors, ventilators, and other respiratory equipment. (3-30-07)

**c.** The total monthly rental cost of a DME item must not exceed one-tenth (1/10) of the total purchase price of the item. (3-30-07)

~~**e.** For codes that are manually priced, including miscellaneous codes, a copy of the manufacturer's suggested retail pricing (MSRP) or an invoice or quote from the manufacturer is required. Reimbursement will be seventy five percent (75%) of MSRP. If pricing documentation is the invoice, reimbursement will be at cost plus ten percent (10%), plus shipping (if that documentation is provided). (3-30-07)~~

~~**d.** No reimbursement will be made for the cost of repairs (materials or labor) covered under the manufacturer's warranty. The date of purchase and the warranty period must be kept on file by the DME vendor. The following warranty periods are required to be provided on equipment purchased by the Department: (3-30-07)~~

~~i. A power drive wheelchair must have a minimum one (1) year warranty period; (3-30-07)~~

~~ii. An ultra light or high strength lightweight wheelchair must have a lifetime warranty period on the frame and crossbraces; (3-30-07)~~

~~iii. All other wheelchairs must have a minimum one (1) year warranty period; (3-30-07)~~

~~iv. All electrical components and new or replacement parts must have a minimum six (6) month warranty period; (3-30-07)~~

~~v. All other DME not specified above must have a minimum one (1) year warranty period; (3-30-07)~~

~~vi. If the manufacturer denies the warranty due to user misuse/abuse, that information must be forwarded to the Department at the time of the request for repair or replacement; (3-30-07)~~

~~vii. The monthly rental payment must include a full service warranty. All routine maintenance, repairs, and replacement of rental equipment are the responsibility of the provider. (3-30-07)~~

~~**e.** Covered equipment must meet the definition of durable medical equipment and be medically necessary as defined in Section 011 of these rules. All equipment must be prior authorized by the Department except for the following: (3-30-07)~~

~~i. Bilirubin lights (require prior authorization after fourteen (14) days); (3-30-07)~~

~~ii. Commode chairs and toilet seat extenders; (3-30-07)~~

~~iii. Crutches and canes; (3-30-07)~~

~~iv. Electric or hydraulic patient lift devices designed to transfer a person to and from bed to wheelchair or bathtub, but excluding lift chairs, devices attached to motor vehicles, and wall mounted chairs which lift persons up and down stairs; (3-30-07)~~

~~v. Grab bars for the bathroom adjacent to the toilet and/or bathtub; (3-30-07)~~

<del>vi.</del>	<del>Hand-held showers;</del>	<del>(3-30-07)</del>
<del>vii.</del>	<del>Head gear (protective);</del>	<del>(3-30-07)</del>
<del>viii.</del>	<del>Hearing aids (see Section 742 of these rules for coverage and limitations);</del>	<del>(3-30-07)</del>
<del>ix.</del>	<del>Home blood glucose monitoring equipment;</del>	<del>(3-30-07)</del>
<del>x.</del>	<del>Non-implantable intravenous infusion pumps, and/or NG/gastric tube feeding pumps, IV poles/stands, intrathecal administration kits;</del>	<del>(3-30-07)</del>
<del>xi.</del>	<del>Hand-held nebulizers and manual or electric percussor;</del>	<del>(3-30-07)</del>
<del>xii.</del>	<del>Medication organizers;</del>	<del>(3-30-07)</del>
<del>xiii.</del>	<del>Oxygen equipment;</del>	<del>(3-30-07)</del>
<del>xiv.</del>	<del>Compressors and breathing circuits, humidifiers used with IPPB or oxygen;</del>	<del>(3-30-07)</del>
<del>xv.</del>	<del>Sliding boards and bath benches/chairs;</del>	<del>(3-30-07)</del>
<del>xvi.</del>	<del>Suction pumps;</del>	<del>(3-30-07)</del>
<del>xvii.</del>	<del>Sheep skins, foam or gel pads or alternating pressure pad with pump for the prevention or treatment of decubitus ulcers;</del>	<del>(3-30-07)</del>
<del>xviii.</del>	<del>Traction equipment; and</del>	<del>(3-30-07)</del>
<del>xix.</del>	<del>Walkers.</del>	<del>(3-30-07)</del>

**027. Notice of Decision.** A Notice of Decision approving or denying a requested item will be issued to the participant by the Department. The participant has twenty-eight (28) days from the date of the denial to request ~~an~~ *administrative fair* hearing on the decision. Hearings will be conducted in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ~~(3-30-07)~~  

**754. (RESERVED)**

**755. DURABLE MEDICAL EQUIPMENT AND SUPPLIES: PROVIDER REIMBURSEMENT.**

**01. Items Included in Per Diem Excluded.** No payment will be made for any participant's DME or medical supplies that are included in the per diem payment while such an individual is an inpatient in a hospital nursing facility or ICF/ID. (3-30-07)

**02. Least Costly Limitation.** When multiple features, models or brands of equipment or supplies are available, coverage will be limited to the least costly version that will reasonably and effectively meet the minimum requirements of the individual's medical needs. (3-30-07)

**03. Billing Procedures.** The Department will provide billing instructions to providers of DME/medical supplies. When prior authorization by the Department is required, the authorization number must be included on the claim form. (3-30-07)

**04. Fees and Upper Limits.** The Department will reimburse according to Section 230 of these rules. (3-30-07)

**05. Date of Service.** Unless specifically authorized by the Department the date of services for durable medical equipment and supplies is the date of delivery of the equipment and/or supply(s). The date of service cannot be prior to the vendor receiving all medical necessity documentation (3-30-07)

**06. Manually Priced Codes.** For codes that are manually priced, including miscellaneous codes, a copy of the manufacturer's suggested retail pricing (MSRP) or an invoice or quote from the manufacturer is required. Reimbursement will be seventy-five percent (75%) of MSRP. If the pricing documentation is the invoice, reimbursement will be at cost plus ten percent (10%), plus shipping, if that documentation is provided. ( )

**07. Warranties and Cost of Repairs.** No reimbursement will be made for the cost of repairs (materials or labor, or both) covered under the manufacturer's warranty. The date of purchase and the warranty period must be kept on file by the DME vendor. The following warranty periods are required to be provided on equipment purchased by the Department: ( )

**a.** A power drive wheelchair must have a minimum one (1) year warranty period; ( )

**b.** An ultra-light or high-strength lightweight wheelchair must have a lifetime warranty period on the frame and crossbraces; ( )

**c.** All other wheelchairs must have a minimum one (1) year warranty period; ( )

**d.** All electrical components and new or replacement parts must have a minimum six (6) month warranty period; ( )

**e.** All other DME not specified in Subsections 755.07.a. through 755.07.d. of this rule must have a minimum one (1) year warranty period; ( )

**f.** If the manufacturer denies the warranty due to user misuse or abuse, or both, that information must be forwarded to the Department at the time of the request for repair or replacement; ( )

**g.** The monthly rental payment must include a full service warranty. All routine maintenance, repairs, and replacement of rental equipment are the responsibility of the provider. ( )

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

### **16.03.09 – MEDICAID BASIC PLAN BENEFITS**

#### **DOCKET NO. 16-0309-1602**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective April 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also 42 CFR 447, Sections 500 through 522.

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

This rulemaking clarifies the Department's use of the appropriate pricing methodologies to provide reimbursement to pharmacies, reimbursement for physician-administered drugs, and reimbursement to 340B covered entities that already receive discounts from the drug manufacturers. These rule changes also align language and definitions with recent changes to federal regulations under 42 CFR 447.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. At the request of the federal Centers for Medicare & Medicaid Services (CMS), the term "dispensing fee" is being amended to read: "professional dispensing fee." Also, the reference to "claims volume survey" is being removed.

The complete text of the proposed rule was published in the October 5, 2016, Idaho Administrative Bulletin, [Vol. 16-10, pages 474 through 478](#).

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

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Karen Westbrook at (208) 364-1960.

DATED this 18th 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](mailto: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, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also 42 CFR 447, Sections 500 through 522.

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

<b>Monday, October 17, 2016 2:30 pm (Local)</b>	<b>Tuesday, October 18, 2016 11:30 am (Local)</b>	<b>Wednesday, October 19, 2016 9:00 am (Local)</b>
<b>Medicaid Reg. VII Office 150 Shoup Avenue Large Conf. Rm., 2nd Floor Idaho Falls, ID</b>	<b>Medicaid Reg. I Office 1120 Ironwood Drive, Ste. 102 Coeur d'Alene, ID</b>	<b>Medicaid Central Office 3232 W. Elder Street Conf. Rm. D - West/East Boise, ID</b>
<b>TELECONFERENCE CALL-IN</b>		

**Toll Free: 1-877-820-7831 -- Participant Code: 701700**

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

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

Idaho is one of a few states that have already implemented the actual acquisition cost pricing methodology now required by Centers for Medicare and Medicaid Services (CMS) and has recognized significant savings as a result.

These rule changes clarify the Department's use of the appropriate pricing methodologies to provide reimbursement to pharmacies, reimbursement for physician-administered drugs, and reimbursement to 340B covered entities that already receive discounts from the drug manufacturers. These rule changes also align language and definitions with recent changes to federal regulations under 42 CFR 447.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and was deemed not feasible as these changes bring the chapter into alignment with federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.



**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karen Westbrook at (208) 364-1960.

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 30th day of August, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-1602

**665. PRESCRIPTION DRUGS: PROVIDER REIMBURSEMENT.**

All medications dispensed to Idaho Medicaid participants will be reimbursed based on actual acquisition costs. All medications administered to participants by physicians or other qualified and licensed providers must be reimbursed based on Medicare rates as directed in Section 56-265, Idaho Code, or if no Medicare rate is available, based on actual acquisition cost. Idaho Medicaid may require providers to supply documentation of their acquisition costs as described in the Medicaid Pharmacy Claims Submission Manual available at: [https://idaho.fhsc.com/downloads/providers/IDRx\\_Pharmacy\\_Claims\\_Submission\\_Manual.pdf](https://idaho.fhsc.com/downloads/providers/IDRx_Pharmacy_Claims_Submission_Manual.pdf). Reimbursement is restricted to those drugs supplied from labelers that are participating in the CMS Medicaid Drug Rebate Program. ( )

**01. Pharmacy Reimbursement.** Prescriptions not filled in accordance with the provisions of Subsection 664.02 of these rules will be subject to nonpayment or recoupment. The following protocol must be followed for proper reimbursement. (4-4-13)( )

**01a. Filing Claims.** ~~Reimbursement is restricted to those drugs supplied from labelers that are participating in the CMS Medicaid Drug Rebate Program.~~ Pharmacists must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. Upon request, the contractor will provide pharmacies with a supply of claim forms. The form must include information described in the pharmacy guidelines issued by the Department. (4-4-13)( )

**02b. Claim Form Review.** Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant. (3-30-07)

**03c. Billed Charges.** A pharmacy's billed charges are not to exceed the usual and customary charges defined as the lowest charge by the provider to the general public for the same service including advertised specials. (3-30-07)

**04d. Reimbursement.** Reimbursement to pharmacies is limited to the lowest of the following: (3-30-07)

**i.** Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the professional dispensing fee assigned by the Department; (3-30-07)( )

**ii.** State Maximum Allowable Cost (SMAC), as established by the Department, plus the assigned professional dispensing fee; (3-30-07)( )

**iii.** ~~Estimated Acquisition Cost (EAC), defined as the Average~~ Actual Acquisition Cost (AAC) ~~based on results of the periodic state cost survey as defined in this rule,~~ plus the assigned professional dispensing fee. In

cases where no ~~4~~AAC is available, reimbursement will be the Wholesale Acquisition Cost (WAC). WAC will mean the price, paid by a wholesaler for the drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug as published by a recognized compendia of drug pricing on the last day of the calendar quarter that corresponds to the calendar quarter; or ~~(4-4-13)~~( )

~~d~~iv. The pharmacy's billed charges as defined in Subsection 665.0~~3~~1 of this rule. ~~(4-4-13)~~( )

~~e~~. Periodic State Cost Surveys. The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid program are required to participate in these periodic state cost surveys by disclosing the costs of all drugs. A pharmacy that is non-responsive to the periodic state cost surveys can be disenrolled as a Medicaid provider by the Department. ( )

~~05~~f. Professional Dispensing Fee. Only one (1) professional dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: ~~(4-4-13)~~( )

~~a~~i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (3-30-07)

~~b~~ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; (3-30-07)

~~e~~iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (3-30-07)

~~d~~iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (3-30-07)

~~06~~g. Claims Volume Survey for Tier-Based Professional Dispensing Fees. The Department will survey pharmacy providers to establish a professional dispensing fee for each provider. The professional dispensing fees will be paid based on the provider's total annual claims volume. The provider must return the claims volume survey to the Department no later than May 31st each year. Pharmacy providers who do not complete the annual claims volume survey will be assigned the lowest professional dispensing fee starting on July 1st until the next annual survey is completed. Based upon the annual claims volume of the enrolled pharmacy, the professional dispensing fee is provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. ~~(4-4-13)~~( )

~~07~~h. Remittance Advice. Claims are processed by computer, and payments are made directly to the pharmacy or its designated bank through electronic ~~claims~~ funds transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. ~~(3-30-07)~~( )

## 02. 340B Covered Entity Reimbursement. ( )

~~a~~. Participation as a 340B Covered Entity. Medicaid will reimburse 340B covered entities as defined in Section 340B of the Public Health Service Act, codified under 42 U.S.C. 256b(a)(4), when the provider meets the following requirements: ( )

i. A 340B covered entity may receive reimbursement for drugs provided to Idaho Medicaid participants through the 340B drug pricing program if the 340B covered entity submits its unique 340B identification number issued by the Health Resources and Services Administration (HRSA) and a copy of its completed HRSA 340B registration to Idaho Medicaid. ( )

ii. A 340B covered entity that elects to provide drugs to Idaho Medicaid participants through the 340B drug pricing program must use 340B covered outpatient drugs for all dispensed or administered drugs, including

those dispensed through the 340B covered entity's retail pharmacy or administered in an outpatient clinic. A 340B covered entity must ensure that a contract pharmacy does not dispense drugs, or receive Medicaid reimbursement for drugs, acquired by the 340B covered entity through the 340B drug pricing program. ( )

iii. A 340B covered entity must provide Idaho Medicaid with thirty (30) days advance written notice of its intent to discontinue the provision of drugs acquired through the 340B drug pricing program to Idaho Medicaid participants. ( )

b. Filing Claims. A 340B covered entity must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. The form must include information described in the pharmacy guidelines issued by the Department. ( )

c. Claim Form Review. Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant. ( )

d. Billed Charges. A 340B covered entity's billed charges are not to exceed the entity's actual 340B drug acquisition cost. ( )

e. Reimbursement. Reimbursement to 340B covered entities is limited to their actual 340B drug acquisition cost submitted plus the assigned professional dispensing fee. ( )

f. Professional Dispensing Fee. Only one (1) professional dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: ( )

i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; ( )

ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; ( )

iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or ( )

iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. ( )

g. Tier-Based Professional Dispensing Fees. A professional dispensing fee for each 340B covered entity will be established in accordance with this rule. ( )

h. Remittance Advice. Claims are processed by computer, and payments are made directly to the 340B covered entity or its designated bank through electronic funds transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. ( )

**083. Return of Drugs.** Drugs dispensed in unit dose packaging as defined by IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," ~~Subsection 156.05~~ 012, must be returned to the dispensing pharmacy when the participant no longer uses the medication as follows: ~~(3-30-07)~~ ( )

a. A pharmacy provider using unit dose packaging must comply with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," ~~Subsection 154.6.05~~. ~~(3-30-07)~~ ( )

b. The pharmacy provider that receives the returned drugs must credit the Department the amount billed for the cost of the drug less the professional dispensing fee. ~~(3-30-07)~~ ( )

c. The pharmacy provider may receive a fee for acceptance of returned unused drugs. The value of the

unused drug being returned must be cost effective as determined by the Department. (3-30-07)

~~**09. Periodic State Cost Surveys.** The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid program are required to participate in these periodic state cost surveys by disclosing the costs of all drugs net of any special discounts or allowances. A pharmacy that is non-responsive to the periodic state cost surveys can be disenrolled as a Medicaid provider by the Department. (4-4-13)~~

**404. Cost Appeal Process.** Cost appeals will be determined by the Department's process provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. (4-4-13)

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

### **16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

#### **DOCKET NO. 16-0310-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code, and 42 CFR 418.302.

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

These rule changes implement a two-tiered routine home care reimbursement for Medicaid hospice providers, and add a new service intensity add-on payment to the hospice payment methodology for Medicaid. This will align this chapter of rules with recent changes in federal regulations (42 CFR 418.302).

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 1, 2016, Idaho Administrative Bulletin, [Vol. 16-6, pages 35 through 37](#).

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

There is an estimated increase of \$213,000 in annual aggregate expenditures as a result of this rulemaking. \$64,000 of this will come from the State General Fund; the remaining \$149,000 will come from federal matching funds.

The associated system changes needed are minor and will occur within existing business processes and funding.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cale Coyle at (208) 364-1817.

DATED this 4th day of November, 2016.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Tel: (208) 334-5500  
Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto: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 January 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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code, and 42 CFR 418.302.

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

**Monday, June 13, 2016 - 3:00 p.m. (MDT)**

**Medicaid Central Office  
3232 W. Elder Street  
Conf. Room D -- West/East  
Boise, ID**

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

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

These rule changes implement a two-tiered routine home care reimbursement for Medicaid hospice providers, and add a new service intensity add-on payment to the hospice payment methodology for Medicaid. This will align this chapter of rules with recent changes in federal regulations (42 CFR 418.302).

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as this rulemaking aligns this chapter of rules with recent changes in federal regulations (42 CFR 418.302) due to go into effect January 1, 2016.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

There is an estimated increase of \$213,000 in annual aggregate expenditures as a result of this rulemaking. \$64,000 of this will come from the State General Fund; the remaining \$149,000 will come from federal matching funds.

The associated system changes needed are minor and will occur within existing business processes and funding.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is Temporary and brings the chapter into alignment with recent changes to federal regulation.

**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 Cale Coyle at (208) 364-1817.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2016.

DATED this 6th Day of May, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1601

**456. HOSPICE: PROVIDER REIMBURSEMENT.**

With the exception of payment for physician services under Section 458 of these rules, Medicaid reimbursement for hospice care will be made at one (1) of ~~four~~ **five** (~~4~~**5**) predetermined rates for each day in which a participant receives the respective type and intensity of the services furnished under the care of the hospice. The ~~four~~ **five** (~~4~~**5**) rates are prospective rates; there will be no retroactive rate adjustments other than the application of the “cap” on overall payments, the service intensity add-on, and the limitation on payments for inpatient care, if applicable. A description of the payment for each level of care is described in Subsections 456.01 through 456.04 of these rules.

~~(3-19-07)~~( )

**01. Routine Home Care.** The hospice provider will be paid ~~the~~ **one** (~~1~~**2**) routine home care rates for each day the patient is in residence, under the care of the hospice, and not receiving continuous home care. ~~The~~ **one** rate is paid without regard to the volume or intensity of routine home care services provided on any given day. The two-rate payment methodology will result in a higher based payment for days one (1) through sixty (60) of hospice care and a reduced rate for days sixty-one (61) to end-of-care. If a participant leaves hospice care and then later is placed back on hospice care, regardless of hospice provider, a minimum of a sixty (60) day gap in hospice services is required in order for the routine home care rate to be paid at the higher base payment rate. If there is not a minimum of a sixty (60) day gap in hospice services being provided, the hospice provider will be paid at the rate for which the participant is qualified.

~~(3-19-07)~~( )

**02. Continuous Home Care.** Continuous home care is to be provided only during a period of crisis. A period of crisis is a period in which a patient requires continuous care which is primarily nursing care to achieve palliation and management of acute medical symptoms. Care must be provided by either a registered nurse or a licensed practical nurse and a nurse must provide care for at least half the total period of care. A minimum of eight (8) hours of care must be provided during a twenty-four (24) hour day which begins and ends at midnight. This care need not be continuous and uninterrupted. If less skilled care is needed on a continuous basis to enable the person to remain at home, this is covered as routine home care. For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice up to twenty-four (24) hours per day.

(3-19-07)

**03. Inpatient Respite Care.** The hospice will be paid at the inpatient respite care rate for each day that the participant is in an approved inpatient facility and is receiving respite care. Payment for respite care may be made for a maximum of five (5) days at a time including the date of admission but not counting the date of discharge in any monthly election period. Payment for the sixth and any subsequent day is to be made at the appropriate rate routine, continuous, or general inpatient rate.

(3-19-07)

**04. General Inpatient Care.** Payment at the inpatient rate will be made when general inpatient care is provided. No other fixed payment rates will be applicable for a day on which the participant receives hospice general inpatient care except as described in Section 458 of these rules.

(3-19-07)

**a.** Date of discharge. For the day of discharge from an inpatient unit, the appropriate home care rate is to be paid unless the patient dies as an inpatient. When the patient is discharged as deceased, the inpatient rate, either general or respite, is to be paid for the discharge date. (3-19-07)

**b.** Hospice payment rates. The Medicaid hospice payment rates are the same as the Medicare hospice rates, adjusted to disregard cost offsets attributable to Medicare coinsurance amounts. Under the Medicaid hospice benefit, no cost sharing may be imposed with respect to hospice services rendered to Medicaid participants. (3-19-07)

**c.** Obligation of continuing care. After the participant's hospice benefit expires, the patient's Medicaid hospice benefits do not expire. The hospice must continue to provide that participant's care until the patient expires or until the participant revokes the election of hospice care. (3-19-07)

**05. Service Intensity Add-On.** For hospice services with dates of service on and after January 1, 2016, a service intensity add-on payment will be made for a visit by a registered nurse (RN) or social worker when provided in the last seven (7) days of life. Payment for the service intensity add-on is in addition to the routine home care rate and is calculated by multiplying the continuous home care rate per fifteen (15) minutes by the number of units for the combined visits for the day. Payment must not exceed sixteen (16) units per day, and is adjusted for geographic differences in wages. Phone time for a provider's social worker is not eligible for a service intensity add-on payment. ( )



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

### **16.03.18 – MEDICAID COST-SHARING**

#### **DOCKET NO. 16-0318-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-253 and 56-257, Idaho Code, and 42 CFR 435.726.

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

In order to keep pace with the increase of housing and utility expenses in Idaho, these rule changes increase the Personal Needs Allowance (PNA) amounts used in the financial eligibility calculation for those Medicaid participants who reside in the community and who are responsible for their own rent or mortgage expenses. The PNA will be increased from 150% of the federal SSI amount to 180% of the federal SSI amount for eligible waiver participants who incur a mortgage or rent expense.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 1, 2016, Idaho Administrative Bulletin, [Vol. 16-6, pages 38 through 40](#).

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

The total anticipated cost of this rule change is projected to be \$1,524,158 per year, due to the reduced participant Share of Cost for Medicaid waiver services. The SFY17 blended rate Federal Medical Assistance Percentage (FMAP) is 70.91%. The impact to the state general fund is projected to be \$443,377 per year, based on current participant counts. This rule change will result in an increased cost of \$443,337 per year in state general funds and \$1,080,780 in federal dollars.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Ali Fernández at (208) 287-1156.

DATED this 4th day of November, 2016.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Tel: (208) 334-5500  
Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto: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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-253 and 56-257, Idaho Code, and 42 CFR 435.726.

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

<b>Friday, June 10, 2016 2:00 p.m. (MDT)</b>	<b>Friday, June 10, 2016 2:00 p.m. (PDT)</b>	<b>Wednesday, June 22, 2016 2:00 p.m. (MDT)</b>
<b>Medicaid Central Office 3232 W. Elder Street Conf. Rm D - West/East Boise, ID</b>	<b>Medicaid Reg. II Office 1118 "F" Street 3rd Floor Conference Room Lewiston, ID</b>	<b>Medicaid Reg. VII Office 150 Shoup Avenue Large Conference Room 2nd Floor Idaho Falls, ID</b>

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

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

Advocates for Idaho residents with disabilities requested the Department review the Personal Needs Allowance (PNA) amounts used in the financial eligibility calculation for those Medicaid participants who reside in the community and who are responsible for their own rent or mortgage expenses. The Department has determined that while the Supplemental Security Income (SSI) amount is adjusted annually by the Social Security Administration to account for cost of living increases, it has not kept pace with the increase of housing and utility expenses in Idaho.

To address this, these rule changes increase the Personal Needs Allowance from 150% of the federal SSI amount to 180% of the federal SSI amount for eligible waiver participants who incur a mortgage or rent expense.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as this rulemaking confers a benefit to Home and Community Based Services waiver participants.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 total anticipated cost of this rule change is projected to be \$1,524,158 per year, due to the reduced participant Share of Cost for Medicaid waiver services. The SFY17 blended rate Federal Medical Assistance Percentage (FMAP) is 70.91%. The impact to the state general fund is projected to be \$443,377 per year, based on current participant counts. This rule change will result in an increased cost of \$443,337 per year in state general funds and \$1,080,780 in federal dollars.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking is not being conducted for this docket because negotiated rulemaking for these rule changes was held last year -- see the Notice of Negotiated Rulemaking in the July 1, 2015, [Idaho Administrative Bulletin - Vol. 15-7, p. 58](#). (This docket was originally planned for 2015, but was canceled). Since then, the Department has been working with stakeholders informally and has notified them that the changes they negotiated last year are moving forward again under this temporary and proposed rule docket.

**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 Ali Fernández at (208) 287-1156.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2016.

DATED this 6th Day of May, 2016.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0318-1601**

**400. PARTICIPATION IN THE COST OF HOME AND COMMUNITY-BASED WAIVER SERVICES.**

Medicaid participants required to participate in the cost of Home and Community-Based Waiver (HCBS) services as described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," must have their share of cost determined as described in Subsections 400.01 through 400.10 of this rule. (3-19-07)

**01. Excluded Income.** Income excluded under the provisions of IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Sections 723 and 725, is excluded in determining participation. (3-19-07)

**02. Base Participation.** Base participation is income available for participation after subtracting all allowable deductions, except for the incurred medical expense deduction in Subsection 400.07 of this rule. Base participation is calculated by the participant's Self Reliance Specialist. The incurred medical expense deduction is calculated by the Regional Medicaid Services (RMS). (3-19-07)

**03. Community Spouse.** Except for the elderly or physically disabled participant's personal needs allowance, base participation for a participant with a community spouse is calculated under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 725. A community spouse is the spouse of an HCBS participant who is not an HCBS participant and is not institutionalized. The HCBS personal needs allowance for a participant living in adult residential care equals the federal Supplemental Security Income (SSI) benefit rate for an individual living independently. (3-19-07)

**04. Home and Community Based Services (HCBS) Spouse.** Except for the elderly or physically disabled participant's personal needs allowance (PNA), base participation for a participant with an HCBS spouse is calculated and specified under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 723. An HCBS spouse is the spouse of a participant who also receives HCBS. (3-19-07)

**05. Personal Needs Allowance.** The participant's personal needs allowance depends on his marital status and legal obligation to pay rent or mortgage. The participant's personal needs allowance is deducted from his income after income exclusions and before other allowable deductions. To determine the amount of the personal

needs allowance, use Table 400.05 of this rule:

TABLE 400.05 - PERSONAL NEEDS ALLOWANCE			
Amount of Personal Needs Allowance (PNA) for Participation			
Not Responsible for Rent or Mortgage		Responsible for Rent or Mortgage	
Marital Status	PNA	Marital Status	PNA
No Spouse	One-hundred percent (100%) of the federal SSI benefit for a person with no spouse	No Spouse	One-hundred and <del>fifty</del> eighty percent (1 <del>5</del> 80%) of the Federal SSI benefit for a person with no spouse
Married with Community Spouse	One-hundred and fifty percent (150%) of the Federal SSI benefit for a person with no spouse	Married with Community Spouse	One-hundred and <del>fifty</del> eighty percent (1 <del>5</del> 80%) of the Federal SSI benefit for a person with no spouse
Married with HCBS Spouse	One-hundred percent (100%) of the Federal SSI benefit for a person with no spouse. Each spouse receives this amount as his PNA.	Married with HCBS Spouse	One-hundred and <del>fifty</del> eighty percent (1 <del>5</del> 80%) of the Federal SSI benefit for a single person. Each spouse receives this amount as his PNA.

(3-19-07)( )

**06. Developmentally Disabled Participants.** These allowances are specified in IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD).” The HCBS personal needs allowance for adult participants receiving waiver services under the Developmentally Disabled Waiver is three (3) times the federal SSI benefit amount to an individual in his own home. (3-19-07)

**07. Incurred Medical Expenses.** Amounts for certain limited medical or remedial services not covered by the Idaho Medicaid Plan and not paid by a third party may be deducted from the base participation amount. The Department must determine whether a participant’s incurred expenses for such limited services meet the criteria for deduction. The participant must report such expenses and provide verification in order for an expense to be considered for deduction. Costs for over-the-counter medications are included in the personal needs allowance and will not be considered a medical expense. Deductions for necessary medical or remedial expenses approved by the Department will be deducted at application, and changed, as necessary, based on changes reported to the Department by the participant. (3-19-07)

**08. Remainder After Calculation.** Any remainder after the calculation in Subsection 400.05 of this rule is the maximum participation to be deducted from the participant's provider payments to offset the cost of services. The participation amount will be collected from the participant by the provider. The provider and the participant will be notified by the Department of the amount to be collected. (3-19-07)

**09. Recalculation of Participation.** The participant’s participation amount must be recalculated annually at redetermination or whenever a change in income or deductions becomes known to the Department. (3-19-07)

**10. Adjustment of Participation Overpayment or Underpayment Amounts.** The participant’s participation amount is reduced or increased the month following the month the participant overpaid or underpaid the provider. (3-19-07)

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

### **16.03.19 – RULES GOVERNING CERTIFIED FAMILY HOMES**

**DOCKET NO. 16-0319-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective July 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-3505, and 56-1005, Idaho Code.

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

After the public comment period, the Department is removing the reference to Title 6, Chapter 3, Idaho Code, from Section 260.02.c. of this chapter. The new requirements for terminating an admission agreement outlined in IDAPA 16.03.19.260 protect the resident's rights and align with the spirit of Idaho's Landlord/Tenant laws found in the citation without requiring the specific legal process described in the citation.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 95 through 99](#).

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

There is no anticipated fiscal impact to the State General Fund or to dedicated funds for this rule change. This rulemaking is intended to be cost neutral.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Steven Millward at (208) 334-0706.

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  
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E-mail: [dhwrules@dhw.idaho.gov](mailto: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 39-3505, and 56-1005, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 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 rule changes are required to align the Rules Governing Certified Family Homes with Idaho Code, specifically:

1. Provides an exemption to certification for VA Medical Foster Homes, as defined in Sections 39-3502 and 39-3512, Idaho Code, and
2. Amends the requirements for termination of the admission agreement since current rules concerning notification of termination are not consistent with requirements in Title 55, Chapter 2, and Title 6, Chapter 3, Idaho Code.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

There is no anticipated fiscal impact to the State General Fund or to dedicated funds for this rule change. This rulemaking is intended to be cost neutral.

**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 April 6, 2016, Idaho Administrative Bulletin, [Vol. 16-4, page 32](#), and in the May 4, 2016, Idaho Administrative Bulletin, [Vol. 16-5, page 48](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karen Vasterling at (208) 239-6263.

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**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0319-1601

**001. TITLE, SCOPE, AND EXCEPTIONS.**

**01. Title.** These rules are cited as IDAPA 16.03.19, “Rules Governing Certified Family Homes.” (4-11-06)

**02. Scope.** These rules set the minimum standards and administrative requirements for any home that is paid to care for an adult living in the home, when the adult is elderly or has a developmental disability, mental illness, or physical disability, and needs assistance with activities of daily living. (4-11-06)

**03. Exceptions to These Rules.** These rules do not apply to the following: (4-11-06)

**a.** Any home that provides only housing, meals, transportation, housekeeping or recreational and social activities. (4-11-06)

**b.** Any health facility defined by Title 39, Chapter 13, Idaho Code. (4-11-06)

**c.** Any residential care or assisted living facility defined by Title 39, Chapter 33, Idaho Code. (4-11-06)

**d.** Any arrangement for care in a relative’s home that is not compensated through a federal or state program. (4-11-06)

**e.** Any home approved by the Department of Veterans Affairs as a “medical foster home” described in 38 CFR Part 17 and Sections 39-3502 and 39-3512, Idaho Code. Homes that provide care to both veterans and non-veterans are not exempt from these rules. ( )

**04. State Certification to Supersede Local Regulation.** These rules will supersede any program of any political subdivision of the state which certifies or sets standards for certified family homes. These rules do not supersede any other local regulations. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. RESIDENT RIGHTS POLICY.**

Each certified family home will develop and implement a written resident rights policy which will protect and promote the rights of each resident. The written description of legal rights must include a description of the protection of personal funds and a statement that a resident may file a complaint with the Department at the address in Section 005 of these rules, or local Regional Office regarding resident abuse and neglect and misappropriation of resident property in the home. Resident rights include the following: (4-11-06)

**01. Privacy.** Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits and meetings of family and resident groups, including: (4-11-06)

**a.** The right to send and receive mail unopened; (4-11-06)

**b.** If the resident is married, privacy for visits by his spouse. If both are residents in the home, they are permitted to share a room unless medically inadvisable, as documented by the attending physician. (4-11-06)

**02. Humane Care.** Each resident has the right to humane care and a humane environment, including

- the following: (4-11-06)
- a. The right to a diet which is consistent with any religious or health-related restrictions; (4-11-06)
  - b. The right to refuse a restricted diet; and (4-11-06)
  - c. The right to a safe and sanitary living environment. (4-11-06)
- 03. Respectful Treatment.** Each resident has the right to be treated with dignity and respect, including: (4-11-06)
- a. The right to be treated in a courteous manner by the provider; (4-11-06)
  - b. The right to receive a response from the home to any request of the resident within a reasonable time; (4-11-06)
  - c. Freedom from discrimination; and (4-11-06)
  - d. Freedom from intimidation, manipulation, coercion, and exploitation. (4-11-06)
  - e. The right to wear his own clothing. (4-11-06)
  - f. The right to determine his own dress and hair style; (4-11-06)
- 04. Basic Needs Allowance.** Residents whose care is paid for by public assistance must retain, for their personal use, the difference between their total income and the Certified Family Home basic allowance established by IDAPA 16.03.05. "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled," Section 513. (4-11-06)
- 05. Resident Funds.** Residents have the right to manage their personal funds. A home must not require a resident to deposit his personal funds with the home. (4-11-06)
- 06. Access to Resident.** Each home must permit immediate access to any resident by any representative of the Department, by the state Ombudsman for the elderly or his designees, by an adult protection investigator or by the resident's personal physician. Each home must also permit the following: (4-11-06)
- a. Immediate access to a resident by immediate family or other relatives, subject to the resident's right to deny or withdraw consent at any time; (4-11-06)
  - b. Immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time; (4-11-06)
  - c. Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. (4-11-06)
- 07. Freedom From Harm.** The resident has the right to be free from physical, mental, or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline. (4-11-06)
- a. A certified family provider who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected, or exploited must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, according to Section 39-5303, Idaho Code. (4-11-06)
  - b. The home must report within four (4) hours to the appropriate law enforcement agency when there is reasonable cause to believe that abuse, neglect, misappropriation of resident's property, or sexual assault has resulted in death or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult resident according to Sections 39-5303 and 39-5310, Idaho Code. (4-11-06)



- 08. Health Services.** The resident has the right to control his health-related services, including: (4-11-06)
- a.** The right to retain the services of his own personal physician and dentist; (4-11-06)
  - b.** The right to select the pharmacy or pharmacist of his choice; (4-11-06)
  - c.** The right to confidentiality and privacy concerning his medical or dental condition and treatment; (4-11-06)
  - d.** The right to participate in the formulation of his plan of service. (4-11-06)
- 09. Grievance.** The resident has the right to voice or file a grievance with respect to care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievance and the right to prompt efforts by the home to resolve grievances the resident may have, including those with respect to the behavior of other residents. (4-11-06)
- 10. Advance Notice.** The resident must receive written advance notice at least ~~fifteen (15)~~ **thirty (30)** calendar days prior to his non-emergency transfer or discharge unless he is transferred or discharged only for medical reasons, or for his welfare or the welfare of other residents, or for nonpayment for his stay. ~~The written advance notice can be up to thirty (30) days if agreed to in the admission agreement.~~ **(4-11-06)( )**
- 11. Other Rights.** In addition to the rights outlined in Subsections 200.01 through 200.10 of these rules, the resident has the following rights: (4-11-06)
- a.** The resident has the right to refuse to perform services for the home; (4-11-06)
  - b.** The resident must have access to his personal records and must have the right to confidentiality of personal and clinical records; (4-11-06)
  - c.** The resident has the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others; (4-11-06)
  - d.** The resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the home; (4-11-06)
  - e.** The resident has the right to examine, upon reasonable request, the results of the most recent inspection of the home conducted by the Department with respect to the home and any plan of correction in effect with respect to the home; (4-11-06)
  - f.** The resident has a right to review a list of other certified family homes that may be available to meet his needs in case of transfer; (4-11-06)
  - g.** The resident has the right not to be required to receive routine care of a personal nature from a member of the opposite sex; (4-11-06)
  - h.** The resident has the right to be informed, in writing, regarding the formulation of advance directives as described in Title 39, Chapter 45, Idaho Code; and (4-11-06)
  - i.** The resident must have any other right established by law. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**260. ADMISSIONS.**

**01. Admission Agreement.** At the time of admission to a certified family home, the provider and the resident must enter into an admission agreement. The agreement will be in writing and must be signed by both parties. The agreement must, in itself or by reference to the resident's plan of care, include at least the following:

(4-11-06)

a. Whether or not the resident will assume responsibility for his own medication including reporting missed medication or medication taken on a PRN basis;

(4-11-06)

b. Whether or not the resident has ongoing ability to safeguard himself against personal harm, injury or accident. The certified family home must have a plan in place for steps it will take if the resident is not able to carry out his own self-preservation.

(4-11-06)

c. Whether or not the provider will accept responsibility for the resident's funds;

(4-11-06)

d. How a partial month's refund will be managed;

(4-11-06)

e. Responsibility for valuables belonging to the resident and provision for the return of a resident's valuables should the resident leave the home;

(4-11-06)

f. Amount of liability coverage provided by the homeowner's or renter's insurance policy.

(4-11-06)

g. ~~Fifteen (15) calendar days'~~ Written notice ~~or up to~~ at least thirty (30) calendar days as agreed to in the admission agreement prior to transfer or discharge on the part of either party;

~~(4-11-06)~~ ( )

h. Conditions under which emergency transfers will be made;

(4-11-06)

i. Signed permission to transfer pertinent information from the resident's record to a hospital, nursing home, residential and assisted living facility, or other certified family home;

(4-11-06)

j. Responsibility to obtain consent for medical procedures including the name, address, phone of guardian or power of attorney for health care for any resident who is unable to make his own medical decisions.

(4-11-06)

k. Resident responsibilities as appropriate;

(4-11-06)

l. Amount the home will charge for room, utilities and three (3) daily meals; and

(4-11-06)

m. Other information as needed.

(4-11-06)

**02. Termination of Admission Agreement.** The admission agreement must not be terminated except under the following conditions:

(4-11-06)

a. ~~By written notification by either party~~ Giving the other party ~~fifteen (15)~~ at least thirty (30) calendar days' written notice ~~or as agreed to in the Admission Agreement but not to exceed thirty (30) days~~ for any reason;

~~(4-11-06)~~ ( )

b. The resident's mental or physical condition deteriorates to a level requiring evaluation or services that cannot be provided in a certified family home;

(4-11-06)

c. Nonpayment of the resident's bill;

(4-11-06)

d. Emergency conditions requiring a resident to transfer out of the home without ~~fifteen (15)~~ thirty (30) calendar days' written notice to protect the resident or other residents in the home from harm; and

~~(4-11-06)~~ ( )

e. Other written conditions as mutually established between the resident and the provider at the time of admission.

(4-11-06)

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

### **16.05.07 – THE INVESTIGATION AND ENFORCEMENT OF FRAUD, ABUSE, AND MISCONDUCT**

**DOCKET NO. 16-0507-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b), 56-203(1) & (2), 56-209h, 56-227, 56-227A through D, 56-1001, and 56-1003, Idaho Code, and 42 CFR 1002.214 and 1002.215, and 2016 Senate Bill 1295.

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

Based on provider comments, the Department is adding clarifying language to Section 236, “Civil Monetary Penalty Percentages,” and Section 237, “Civil Monetary Penalties for Criminal History Background Check Violations.” 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 July 6, 2016, Idaho Administrative Bulletin, **Vol. 16-7, pages 66 through 69**.

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

There is no anticipated fiscal impact for this rulemaking. The rules are clarifying current practices for long term care and are intended to be cost neutral.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lori Stiles, at (208) 334-0653.

DATED this 18th day of November, 2016.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
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Boise, ID 83720-0036  
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E-mail: [dhwrules@dhw.idaho.gov](mailto: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(1) & (2), 56-209h, 56-227, 56-227A through D, 56-1001, and 56-1003, Idaho Code, and 42 CFR 1002.214 and 1002.215, and 2016 Senate Bill 1295.

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

<b>Wednesday, July 13, 2016 10:30 a.m. (local)</b>	<b>Thursday, July 14, 2016 11:30 a.m. (local)</b>	<b>Friday, July 15, 2016 11:30 a.m. (local)</b>
<b>Northern Idaho - DHW Office 1120 Ironwood Drive Suite 102 Coeur d'Alene, ID</b>	<b>Eastern Idaho - DHW Office 1070 Hiline Road 3rd Floor Conf. Room Pocatello, ID</b>	<b>Central Idaho - DHW Central Office 450 West State Street 7th Floor Conf. Room Boise, ID</b>

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

**DESCRIPTIVE SUMMARY:** The following is 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 provide for the types of conduct, frequency, and knowledge of the conduct for which the Department has the authority to assess civil monetary penalties. The rules provide the amount of the percentage, and also provides for enhanced penalties for certain types of behaviors and violations. These changes provide the methodology and percentages used for calculating civil monetary penalties.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 59-209(h), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason:

The 2016 Legislature adopted legislation in Section 56-209(h), Idaho Code, to clarify methodology for assessing civil monetary penalties for providers of public assistance. The statute changes, effective July 1, 2016, require this chapter of rules to be updated to reflect changes effective on that date.

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

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

This rulemaking may change the amount of receipts received for Civil Monetary Penalties (CMPs) but should be considered as cost neutral and will have no fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted by the Department. The Negotiated Rulemaking Notice published in the April 6, 2016, Idaho

Administrative Bulletin, Vol. 16-4, with meetings scheduled in Coeur d'Alene, Pocatello, and Boise. Medicaid and public assistance providers also received notification of a survey by e-mail, Medicaid newsletter, and website to which they could respond and provide input on the civil monetary penalty rule changes.

**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 Lori Stiles, at (208) 334-0653.

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

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0507-1601

**235. CIVIL MONETARY PENALTIES.**

Under Section 56-209h, Idaho Code, the Department may assess civil monetary penalties against a provider, any officer, director, owner, and managing employee for conduct identified in Subsections 230.01 through 230.09 of these rules. The amount of penalties may be up to one thousand dollars (\$1,000) for each item or service improperly claimed, except that in the case of multiple penalties the Department may reduce the penalties to not less than ~~twenty~~ five ten percent (~~25~~10%) of the amount of each item or service improperly claimed if an amount can be readily determined. Each line item of a claim, or cost on a cost report is considered a separate claim. These penalties are intended to be remedial, at a minimum recovering costs of investigation and administrative review, and placing the costs associated with non-compliance on the offending provider. ~~(3-30-07)~~ ( )

**236. CIVIL MONETARY PENALTY PERCENTAGES.**

The Department will determine the percentage of each penalty by the type of conduct, the frequency, and knowledge of the conduct. When more than one (1) type of conduct described in Section 230 of these rules is found per line item, the penalty percentage will be based on the most significant conduct. ( )

**01. Conduct Resulting in No Overpayment.** The Department determines civil monetary penalties to be assessed for the following types of conduct violations that did not result in an overpayment. ( )

**a. Participant Fees.** The provider collected or attempted to collect fees from participants that the provider was not entitled to collect. Violations for this type of conduct will result in a ten percent (10%) penalty. ( )

**b. Minor Rule Violations.** Services were provided and properly paid but violated rule, policy, or provider agreement. Minor rule violations will result in a ten percent (10%) penalty. Minor rule violations include, but are not limited to: ( )

**i. Incorrect date spanning:** ( )

**ii. Failure to list required provider credentials; or** ( )

iii. Failure to obtain required client signatures. ( )

**c.** Significant Rule Violations. Services were provided but violated rule, policy, or provider agreement. Significant rule violations will result in a fifteen percent (15%) penalty. Significant rule violations include, but are not limited to: ( )

i. Incomplete physician referrals; or ( )

ii. Failure to maintain documentation once valid Healthy Connections referral is obtained. ( )

**02. Conduct Resulting in Overpayment.** The Department determines the civil monetary penalties to be assessed for the following types of conduct violations resulting in overpayment. Civil monetary penalties will not be assessed when a provider self-reports an overpayment and the Department receives the report prior to the initiation of a Department audit. ( )

**a.** Significant Rule Violations. Services were provided but violated rule, policy, or provider agreement. Significant rule violations will result in a fifteen percent (15%) penalty. Significant rule violations include, but are not limited to: ( )

i. Billing more services than allowed; ( )

ii. Billing non-physician services as physician services; ( )

iii. Billing incorrect codes (such as Physician's Current Procedural Terminology (CPT), diagnosis, revenue, etc.) or modifiers; or ( )

iv. Inadequate documentation to support services billed. ( )

**b.** Significant Rule Violations Related to Participant Care. Services were provided but violated rule, policy, or provider agreement related to participant care. Significant rule violations related to participant care will result in a twenty percent (20%) penalty. Significant rule violations include, but are not limited to: ( )

i. Failure to obtain required Healthy Connections referrals or failure to list required core elements, such as the start and end dates on the referral; ( )

ii. No required physician or practitioner signatures; ( )

iii. No orders or inadequate orders, assessments, plans or evaluations prior to delivery of service or items; ( )

iv. Services or items provided by unqualified staff; ( )

v. Services or items provided by excluded individual; or ( )

vi. Services or items not covered by program. ( )

**c.** Significant Rule Violations for No Service or Refusal of Immediate Access to Documentation. Services were not provided, were not documented, or refusal to provide immediate access to documentation upon written request as required in Section 230.05 of these rules. Violations will result in a twenty-five percent (25%) penalty. Significant rule violations include, but are not limited to: ( )

i. Billing and receiving payment multiple times for the same service or item; ( )

ii. No documentation; ( )

- iii. Cloned documentation: ( )
- iv. Service not provided: ( )
- v. More units billed than provided: ( )
- vi. Billing laboratory services provided by independent laboratory, unless an exception applies, such as an independent laboratory that can bill for a reference laboratory; or ( )

vii. Missing required pre-authorization. ( )

**03. Penalty Enhancements.** ( )

**a.** Error Rates. The Department determines which error rate applies by comparing the number of violations to the number of similar line items audited, or to all audited line items. Penalty percentages identified in Subsections 236.01 and 236.02 of this rule may be increased by: ( )

i. Five percent (5%) when the error percentage of audited services is greater than twenty-five percent (25%); and ( )

ii. Ten percent (10%) when the error percentage of audited services is greater than thirty-five percent (35%). ( )

**b.** Fraudulently or Knowingly. When the Department determines the conduct was committed fraudulently or knowingly as defined in Subsections 010.07 and 010.08 of these rules, the penalty percentages may be increased by fifteen percent (15%). ( )

**237. CIVIL MONETARY PENALTIES FOR CRIMINAL HISTORY BACKGROUND CHECK VIOLATIONS.**

The Department may assess civil monetary penalties against a provider, any officer, director, owner, or managing employee for failing to perform required background checks or failing to meet required time lines for completion of background checks as required by rule. The amount of the penalty is five hundred dollars (\$500) for each month worked for each staff person or contractor for whom the background check was not performed or not performed timely. The maximum amount that may be assessed for criminal history background check violations is five thousand dollars (\$5,000) per month. A partial month is considered a full month for purposes of determining the amount of the penalty. ( )

~~236~~8. -- 239. (RESERVED)

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

### **16.06.01 – CHILD AND FAMILY SERVICES**

#### **DOCKET NO. 16-0601-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections: 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, and 56-1007, Idaho Code; 42 USC 675 as amended by Public Law 113-183; and Sections 16-1621 and 16-1622, Idaho Code, amended under Senate Bill 1328 (2016).

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

These proposed rule changes lower the age at which foster youth are eligible to receive independent living services funded by the John H. Chafee Foster Care Independence Program from 90 days after their 15th birthday to 90 days after their 14th birthday.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, Vol. **16-9, pages 113 through 117**.

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

This rulemaking has no fiscal impact to the state general fund or any other funds as all funding related to these rule changes is federal. The John H. Chafee Foster Care Independence Program funds are capped and Idaho receives the minimum, \$500,000, each year. This rule will simply make these funds available to a larger population of foster youth.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michelle Weir at (208) 334-5651.

DATED this 18th 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](mailto:dhwrules@dhw.idaho.gov)



<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections: 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, and 56-1007, Idaho Code; 42 USC 675 as amended by Public Law 113-183; and Sections 16-1621 and 16-1622, Idaho Code, amended under Senate Bill 1328 (2016).

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

<b>Wednesday, September 21, 2016 - 3:00 pm (MDT)</b>
--

**Len B. Jordan Building**  
**650 W. State Street**  
**Basement Conference Room B-35**  
**Boise, ID**

<b>Via Teleconference Call-In</b>
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**Toll Free: 1-877-820-7831**  
**Participant Code: 174419**

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

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

These rule changes lower the age at which foster youth may begin receiving independent living services funded by the John H. Chafee Foster Care Independence Program. These services help foster youth develop life skills and prepare them for their transition out of foster care. These rule changes will give them earlier access to independent living services and thereby increase their access to life skills training and better prepare them for successful and productive adulthood. Recent changes in federal law (42 U.S.C. 675 as amended by Public Law 113-183) and also subsequent changes to Idaho state law by the 2016 legislature (Sections 16-1621 and 16-1622, Idaho Code) have enabled the Department to make these changes in rule and practice.

Specifically, these proposed rule changes lower the age at which foster youth are eligible to receive independent living services funded by the Chafee Program from 90 days after their 15th birthday to 90 days after their 14th birthday.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

This rulemaking has no fiscal impact to the state general fund or any other funds as all funding related to these rule changes is federal. The John H. Chafee Foster Care Independence Program funds are capped and Idaho receives

the minimum, \$500,000, each year. This rule will simply make these funds available to a larger population of foster youth.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was deemed not feasible as these rule changes simply serve to bring independent living services to foster youth at an earlier age and align the rules with recent changes to enabling legislation in state and federal law.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michelle Weir at (208) 334-5651.

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**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-1601**

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01. Family.** Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

**02. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)

**03. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)

**04. Family (Case) Plan.** Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)

**05. Family Services Worker.** Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)

**06. Federally-Funded Guardianship Assistance for Relatives.** Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. (4-7-11)

**07. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)

08. **Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)
09. **Independent Living.** Services provided to eligible foster or former foster youth, ages ~~fourteen (14)~~ <sup>fifteen (15)</sup> to twenty-one (21), designed to support a successful transition to adulthood. ~~(3-30-01)~~ <sup>(3-30-01)</sup>
10. **Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)
11. **Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)
- a. A member of an Indian tribe; or (3-29-12)
- b. Eligible for membership in an Indian tribe, and who is the biological child of a member of an Indian tribe. (3-29-12)
12. **Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)
13. **Indian Child's Tribe.** (3-18-99)
- a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)
- b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)
14. **Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)
15. **Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)
16. **Interethnic Adoption Provisions of 1996 (IEP).** IEP prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (4-7-11)
17. **Interstate Compact on the Placement of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Title 16, Chapter 21, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)
18. **Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. CORE CHILD AND FAMILY SERVICES.**

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

01. **Crisis Services.** Crisis Services are an immediate response to ensure safety when a child is

believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess safety and place in alternate care, if necessary, to ensure safety for the child. (4-7-11)

**02. Screening Services.** Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

**03. Assessment and Safety/Service Planning Services.** Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (4-7-11)

**04. Preventative Services.** Community-based services which support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

**05. Court-Ordered Services.** These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

**06. Alternate Care (Placement) Services.** Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed or approved by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (3-29-12)

**07. Community Support Services.** Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

**08. Interstate Compact on Out-of-State Placements.** Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the "Interstate Compact on the Placement of Children." Placements must be in compliance with all state and federal laws. (5-8-09)

**09. Independent Living.** Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

**a.** Eligibility Requirements for Current Foster Youth. To be eligible for independent living services, a current foster youth must: (5-8-09)

i. Be ~~fifteen (15)~~ fourteen (14) to nineteen (19) years of age; ~~(5-8-09)~~ ( )

ii. Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is between eighteen (18) and nineteen (19) years of age; and (5-8-09)

- iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)
  - b. Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (5-8-09)
    - i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)
    - ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has reached eighteen (18) years of age; and (5-8-09)
    - iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching ~~fifteen (15)~~ fourteen (14) years of age; or ~~(5-8-09)~~ ( )
    - iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)
  - c. Eligibility Limit. Once established, a youth's eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)
- 10. Adoption Services.** Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)
- 11. Administrative Services.** Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)
- a. Child care licensing; (3-30-01)
  - b. Daycare licensing; (3-30-01)
  - c. Community development; and (5-8-09)
  - d. Contract development and monitoring. (5-8-09)

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.12 – RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)**  
**DOCKET NO. 16-0612-1601**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code, and CFR 45 Part 98.42, for the Reauthorization of the Child Care and Development Block Grants.

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

The Department administers the Idaho Child Care Program through grants and other funding sources. These rules became effective on October 1, 2016 to meet federal requirements.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2016, Idaho Administrative Bulletin, [Vol. 16-9, pages 118 through 137](#).

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

The fiscal impact for SFY 2017 was appropriated by the 2016 Legislature under Line items 9 and 13 in HB 0574. The amount of the grant and federal funds include one-time funding to migrate and modernize the Child Care Program's automation system and to increase the subsidy for child care support and increased caseload funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Ericka Rupp at (208) 334-5815.

DATED this 4th day of November, 2016.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Tel: (208) 334-5500  
Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto: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 October 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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, and CFR 45 Part 98.42, for the Reauthorization of the Child Care and Development Block Grants.

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

**Thursday, September 15, 2016 - 12:00 to 2:00 pm (MDT)**

**Central Idaho DHW Office  
450 W. State Street  
2nd Floor Conference Room 2-A  
Boise, ID**

**Via Teleconference Call-In**

**Toll Free: 1-877-820-7831  
Participant Code: 645464#**

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

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

The Department administers the Idaho Child Care Program through grants and other funding sources. Congress passed the Reauthorization of the Child Care and Development Block Grant Act which requires the state to comply by October 1, 2016. The changes in this chapter of rules implement a 12-month redetermination, job search availability, additional criminal history requirements, health and safety requirements for child care providers, and includes a gradual phase out for those individuals receiving ICCP services whose incomes exceed the limits of the program.

**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:

These rules need to be in effect to meet federal law governing ICCP and to protect the public health, safety, or welfare of children in Idaho receiving these services. The US Congress passed the Reauthorization of the Child Care and Development Block Grant in 2014 with states required to comply by October 1, 2016.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 fiscal impact for SFY 2017 was appropriated by the 2016 Legislature under Line items 9 and 13 in HB 0574. The amount of the grant and federal funds include one-time funding to migrate and modernize the Child Care Program's automation system and to increase the subsidy for child care support and increased caseload funds.

**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 43-44](#).

**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 Ericka Rupp at (208) 334-5815.

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**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-1601**

**003. ADMINISTRATIVE APPEALS.**

**01. Administrative Appeals.** All administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings." (4-2-08)

**02. Complaint Procedure.** The Department will maintain a record of substantiated ~~child protection~~ complaints against child care providers. Information regarding such substantiated ~~child protection~~ complaints is available in accordance with the Section 006 of these rules. (4-2-08)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance with Department Criminal History and Background Check.** Criminal history and background checks are required for ICCP providers. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

**02. ICCP Provider is Approved.** The ICCP provider must have completed a criminal history and background check, and received a clearance, prior to becoming an ICCP provider. (4-9-09)

**03. Availability to Work or Provide Service.** (4-9-09)

**a.** The employer or provider, at its discretion, may allow an individual to provide care or services on a



provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records. (4-9-09)

b. Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (4-9-09)

c. Individuals living in the home who have direct contact with children are allowed contact after the criminal history application and self-disclosure is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a disqualifying crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

**04. Applicants, Providers, and Other Individuals Subject to Criminal History Check Requirements.** The following applicants, providers, and other individuals listed below must submit evidence to the Department that the following individuals have successfully completed and received a Department criminal history and background check clearance: (4-9-09)( )

a. All child care centers employees and volunteers group, family, relative, and in-home providers including owners, operators, and staff who have direct contact with children; (4-9-09)( )

b. Group child care employees and volunteers All individuals thirteen (13) years of age or older who have direct contact with children; (4-9-09)( )

c. Family child care provider and any All individuals age thirteen (13) years of age or older living in the home who have direct contact with children are regularly on the premises; (4-9-09)( )

d. Relative child care provider and any individual age thirteen (13) or older living in the home who have direct contact with children; and (4-9-09)

e. In-home child care provider. (4-9-09)

**05. Renewal of Criminal History and Background Check Requirement.** Applicants, providers, employees, volunteers, and individuals thirteen (13) years of age or older who have direct contact with or provide care to children eligible for ICCP benefits must comply with these requirements and receive a clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks," every five (5) years. ( )

**056. Criminal History and Background Check at Any Time.** The Department can require a criminal history and background check at any time on any individual providing child care to an ICCP eligible child. (4-9-09)

**067. Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the child care provider to the Department when the provider learns of the conviction. (4-9-09)

**010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH L.**

The following definitions and abbreviations apply to this chapter: (4-2-08)

**01. AABD.** Aid to the Aged, Blind, and Disabled. (4-2-08)

**02. Abuse or Abusive.** Provider practices that are inconsistent with sound fiscal, business, or child care practices and result in an unnecessary cost to the Idaho Child Care Program, in reimbursement that is not necessary, or that fail to meet professional recognized standards for child care, or result in physical harm, pain, or mental anguish to children. (7-1-09)

**03. Child.** Any person under age eighteen (18) under the care of a parent, or a person eighteen (18)

years of age or older who is claimed on tax returns as a dependent. (4-2-08)

**04. Child Care.** Care, control, supervision, or maintenance of a child provided for compensation by an individual, other than a parent, for less than twenty-four (24) hours in a day. (4-2-08)

**05. Claim.** Any request or demand for payment, or document submitted to initiate payment, for items or services provided under the Idaho Child Care Program. (7-1-09)

**06. Department.** The Idaho Department of Health and Welfare or its designee. (7-1-09)

**07. Earned Income.** Income received by a person as wages, tips, or self-employment income before deductions for taxes or any other purposes. (4-2-08)

**08. Employment.** A job paying wages or salary at federal or state minimum wage, whichever is applicable, including work paid by commission or in-kind compensation. Full or part-time participation in a VISTA or AmeriCorps program is also employment. (4-2-08)

**09. Foster Care.** The twenty-four (24) hour substitute care of children in the legal custody of the State of Idaho provided in a state licensed foster home by persons who may or may not be related to a child. Foster care is provided in lieu of parental care and is arranged through a private or public agency. ~~(4-1-13)~~ ( )

**10. Foster Child.** A child in the legal custody of the State of Idaho placed for twenty-four (24) hour substitute care by a private or public agency. ~~(4-2-08)~~ ( )

**11. Foster Home.** The private home of an individual or family licensed ~~by~~ under the ~~State of Idaho~~ State of Idaho and providing twenty-four (24) hour substitute care to six (6) or fewer children. ~~(4-1-13)~~ ( )

**12. Fraud or Fraudulent.** An intentional deception or misrepresentation made by a person with knowledge that the deception could result in some unauthorized benefit to himself or some other person. (7-1-09)

**13. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-99)

**14. In Loco Parentis.** Acting "in loco parentis" means a person who acts in place of a parent, assuming care and custody of a child by a formal or informal agreement with the child's parent. (4-2-08)

**15. Intentional Program Violation (IPV).** An intentional false or misleading action, omission, or statement made in order to qualify as a provider or recipient in the Idaho Child Care program or to receive program benefits or reimbursement. (7-1-09)

**16. Job Training and Education Program.** A program designed to provide job training or education. Programs may include high school, junior college, community college, college or university, general equivalency diploma (GED), technical school, and vocational programs. To qualify as a Job Training and Education Program, the program must prepare the trainee for employment. (4-2-08)

**17. Infant/Toddler.** A child less than forty-eight (48) months of age. ( )

**18. Incapacitated Parent.** A parent who is determined by a licensed practitioner of the healing arts to be unfit, incapable, or significantly limited in his ability to provide adequate care for his child or ward. ( )

**1-20. Knowingly, Known, or With Knowledge.** With respect to information or an action about which a person has actual knowledge of the information or action; acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. (7-1-09)

**1820. Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. (4-2-08)

**011. DEFINITIONS AND ABBREVIATIONS -- M THROUGH Z.**

The following definitions and abbreviations apply to this chapter of rules: (4-2-08)

**01. Managing Employee.** A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an organization or entity. (7-1-09)

**02. Minor Parent.** A parent under the age of eighteen (18). (4-2-08)

**03. Non-Recurring Lump Sum Income.** Income received by a family in a single payment, not expected to be available to the family again. (7-1-99)

**04. Parent.** A person responsible for a child because of birth, adoption, step-parent, or guardianship; or a person acting in loco parentis. (4-2-08)

**05. Preventive Services.** Services needed to reduce or eliminate the need for protective intervention. Preventive services permit families to participate in activities designed to reduce or eliminate the need for out-of-home placement of a child by the Department. (4-2-08)

**06. Prospective Income.** Income a family expects to receive within a given time. This can be earned or unearned income. (7-1-99)

**07. Provider.** An individual, organization, agency, or other entity providing child care. (7-1-99)

**08. Relative Provider.** Grandparent, great-grandparent, aunt, uncle, or adult sibling by blood or current marriage who provides child care. (4-2-08)

**09. SSI.** Supplemental Security Income. (4-2-08)

**10. Special Needs.** Any child with physical, mental, emotional, behavioral disabilities, or developmental delays identified on an Individual Education Plan (IEP) or an Individualized Family Service Plan (IFSP). (4-2-08)

**11. State Median Income (SMI).** State Median Income Estimates in the Code of Federal Regulations are available on the U.S. Government Publishing Office website at <https://www.gpo.gov/fdsys>. ( )

~~142.~~ **TAFI.** Temporary Assistance for Families in Idaho. (4-2-08)

~~123.~~ **Unearned Income.** Unearned income includes retirement, interest child support, and any income received from a source other than employment or self-employment. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**070. INCOME LIMITS.**

~~4~~ **To be eligible for child care assistance,** a family's **countable** income must ~~be less than~~ **meet the following guidelines** using the published Federal Poverty Guidelines ~~for one hundred thirty percent (130%) of poverty for a family of the same size. The Federal Poverty Guidelines~~ (FPG) ~~are~~ available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. ~~(4-4-13)~~ ( )

**01. Income at Application.** At the time of application, a family's income must not exceed one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size. ( )

**02. Income During Eligibility Period.** During the eligibility period, when a family's countable income exceeds eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size, the family

becomes ineligible for child care assistance. ( )

**03. Income at Time of Redetermination.** At the time of redetermination, if a family's income exceeds one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size, but does not exceed eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size, the family may receive a graduated phase out of child care assistance. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. EXCLUDED INCOME.**

The following sources of income are not counted as family income. (4-2-08)

**01. Earned Income of a Dependent Child.** Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. (4-2-08)

**02. Income Received for Person Not Residing With the Family.** Income received on behalf of a person who is not living in the home. (4-2-08)

**03. Educational Funds.** All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (4-2-08)

**04. Assistance.** Assistance to meet a specific need from other organizations and agencies. (4-2-08)

**05. Lump Sum Income.** Non-recurring or lump sum income is excluded as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds current income limits for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months. (4-2-08)

**06. Loans.** ~~A loan with written, signed repayment agreements~~ is money received that is to be repaid. (4-2-08) ( )

**07. TAFI and AABD Benefits.** (4-4-13)

**08. Foster Care Payments.** (4-4-13)

**09. AmeriCorps/VISTA Volunteers.** Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under 42 U.C.S. 5044, P.L. 93-113, Title IV, Section 404(g) are excluded as income. (4-2-08)

**10. Income Tax Refunds and Earned Income Tax Credits.** Income tax refunds and earned income tax credits are excluded as income. (4-2-08)

**11. Travel Reimbursements.** Reimbursements from employers for work-related travel. (4-2-08)

**12. Tribal Income.** Income received from a tribe for any purpose other than direct wages. (4-2-08)

**13. Foster Parents' Income.** Income of licensed foster parents is excluded when determining eligibility for a foster child. Income is counted when determining eligibility for the foster parent's own child(ren). (4-2-08)

**14. Adoption Assistance.** Adoption assistance payments are excluded from income. (4-2-08)

~~**15. Child Support Payments.** Court-ordered child support payments made by the parent(s) who receive the child care benefits are deducted from income used to determine eligibility. Both the legal obligation to pay child support and the actual amount paid must be verified. (4-2-08)~~

**165. Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten-year U.S. Census. (4-7-11)

**176. Office of Refugee Resettlement Assistance.** (4-4-13)

**187. Workforce Investment Act (WIA) Benefits or Workforce Innovation and Opportunity Act (WIOA) Benefits.** (~~4-4-13~~) ( )

**073. INCOME DEDUCTIONS.**

Court-ordered child support payments made by a parent who receives child care benefits are deducted from income when determining eligibility. The actual amount paid and the amount of the legal obligation for child support must be verified. ( )

**074. AVERAGING SELF-EMPLOYMENT INCOME.**

**01. Annual Self-Employment Income.** When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if: (5-8-09)

a. The income is received over a shorter period of time than twelve (12) months; and (5-8-09)

b. The household receives income from other sources in addition to self-employment. (5-8-09)

**02. Seasonal Self-Employment Income.** A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover. (5-8-09)

**075. CALCULATION OF SELF-EMPLOYMENT INCOME.**

The Department calculates self-employment income by adding monthly income to capital gains and subtracting a deduction for expenses as determined in Subsection 075.03 of this rule. (~~5-1-11~~) ( )

**01. How Monthly Income is Determined.** If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past income does not reflect expected future income, a proportionate adjustment is made to the expected monthly income. (5-8-09)

**02. Capital Gains Income.** Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department calculates capital gains using the federal income tax method. If the household expects to receive any capital gains income from self-employment assets during the certification period, this amount is added to the monthly income as determined in Subsection 075.01 of this rule to determine the gross monthly income. (~~5-1-11~~) ( )

**03. Self-Employment Expense Deduction.** The Department uses the standard self-employment deduction in Subsection 075.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection 075.03.b. of this rule. (~~5-1-11~~) ( )

a. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 075.01 and 075.02 of this rule; or (~~5-1-11~~) ( )

b. The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from the gross monthly self-employment income: (5-8-09)

i. Net losses from previous tax years; (5-8-09)

- ii. Federal, state, and local income taxes; (5-8-09)
- iii. Money set aside for retirement; (5-8-09)
- iv. Work-related personal expenses such as transportation to and from work; and (5-8-09)
- v. Depreciation. (5-8-09)

**0756. PROJECTING MONTHLY INCOME.**

Income is projected for each month. Past income may be used to project future income. Changes expected during the certification period must be considered. Criteria for projecting monthly income is listed below: (5-1-11)

**01. Income Already Received.** Count income already received by the household during the month. If the actual amount of income from any pay period is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. If no changes are expected, use the known actual pay period amounts for the past thirty (30) days to project future income. (5-1-11)

**02. Anticipated Income.** Count income the household and the Department believe the household will get during the remainder of the certification period. If the income has not changed and no changes are anticipated, use the income received in the past thirty (30) days as one indicator of anticipated income. If changes in income have occurred or are anticipated, past income cannot be used as an indicator of anticipated income. If income changes and income received in the past thirty (30) days does not reflect anticipated income, the Department can use the household income received over a longer period to anticipate income. If income changes seasonally, the Department can use the household income from the last season, comparable to the certification period, to anticipate income. (5-1-11)

**a. Full Month's Income.** If income will be received for all regular pay dates in the month, it is considered a full month of income. (5-1-11)

**b. If income will not be received for all regular pay dates in the month, it is not considered a full month of income and it is not converted.** (5-1-11)

**c. Income Paid on Salary.** Income received on salary, rather than an hourly wage, is counted at the expected monthly salary rate. (5-1-11)

**d. Income Paid at Hourly Rate.** Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly amount. (5-1-11)

**e. Fluctuating Income.** When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. (5-1-11)

**0767. CONVERTING INCOME TO A MONTHLY AMOUNT.**

If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas below: (5-1-11)

- 01. Weekly Amount.** Multiply weekly amounts by four point three (4.3). (5-1-11)
- 02. Bi-Weekly Amount.** Multiply bi-weekly amounts by two point one five (2.15). (5-1-11)
- 03. Semi-Monthly Amount.** Multiply semi-monthly amounts by two (2). (5-1-11)
- 04. Salary Amount.** Use the exact monthly income if it is expected for each month of the certification period. (5-1-11)



**078. ASSET CAP.**

A family must not be in possession of assets exceeding one million dollars (\$1,000,000). ( )

079. -- 099. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. COOPERATION IN ESTABLISHMENT OF PATERNITY AND OBTAINING SUPPORT.**

If a minor child has a non-custodial parent, the biological or adoptive parent, or other individual who lives with the child and exercises parental control, must cooperate in establishing paternity for the child and obtaining child support. (3-26-08)

**01. Providing All Information.** "Cooperation" includes providing all information to identify and locate the non-custodial parent. At a minimum, the first and last name of the non-custodial parent and at least two (2) of the following pieces of information must be provided. (3-26-08)

- a. Birth date; (3-26-08)
- b. Social Security Number; (3-26-08)
- c. Current address; (3-26-08)
- d. Current phone number; (3-26-08)
- e. Current employer; (3-26-08)
- f. Make, model, and license number of any motor vehicle owned by the non-custodial parent; and (3-26-08)
- g. Name, phone numbers and addresses of the parents of the non-custodial parent. (3-26-08)

**02. Established Case for Custodial Parent.** After Child Support Services (CSS) has established a case for a custodial parent, all child support payments must be sent directly to CSS. If the custodial parent receives child support directly from the non-custodial parent, the custodial parent must forward the payment to CSS for receipting. (3-26-08)

**03. Failure to Cooperate.** (3-26-08)

a. Failure to cooperate includes failure to complete the non-custodial or alleged parent information or filiation affidavit as requested, failure to sign the limited power of attorney, or evidence of failure to cooperate provided by Child Support Services (CSS). ~~(3-26-08)~~ ( )

b. When a parent or individual fails to cooperate in establishing paternity and obtaining support, the family is not eligible to participate in the Idaho Child Care Program. (3-26-08)

**04. Exemptions From Cooperation Requirement.** The parent or individual will not be required to provide information about the non-custodial or alleged parent or otherwise cooperate in establishing paternity or obtaining support if good cause for not cooperating exists. Good cause for failure to cooperate must be provided. (3-26-08)

- a. Good cause for failure to cooperate in obtaining support is: (3-26-08)
  - i. Proof the child was conceived as a result of incest or forcible rape; (3-26-08)

ii. Proof the non-custodial parent may inflict physical or emotional harm to the children, the custodial parent or individual exercising parental control. This must be supported by medical evidence, police reports, or as a last resort, an affidavit from a knowledgeable source; and (3-26-08)

iii. Substantial and credible proof is provided indicating the custodial parent cannot provide the minimum information regarding the non-custodial parent. (3-26-08)

b. A parent or individual claiming good cause for failure to cooperate must submit a notarized statement to the Department identifying the child for whom the exemption is claimed. The statement must list the reasons for the good cause claim. (3-26-08)

c. The cooperation requirement will be waived if good cause exists. No further action will be taken to establish paternity or obtain support. If good cause does not exist the parent will be notified that he is not eligible to receive Idaho Child Care program benefits, until child support cooperation as been obtained. (3-26-08)

**104. FAMILY COMPOSITION.**

A family is a group of individuals living in a common residence, whose combined income is considered in determining eligibility and the child care benefit amount. No individual may be considered a member of more than one (1) family in the same month. The following individuals are included in determining the family composition: (4-2-08)

**01. Married Parents.** Married parents living together in a common residence, includes biological, adoptive, step-parent, and foster parent. (5-1-11)

**02. Unmarried Parents.** Unmarried parents who live in the same home and who have a child in common living with them. (4-2-08)

**03. Dependents.** Individuals who are claimed as dependents ~~for tax purposes~~ of a parent or caretaker. ~~(4-2-08)~~ ( )

**04. Minor Parent.** A minor parent and child are considered a separate family when they apply for child care benefits, even if they live with other relatives. (4-2-08)

**05. Individual Acting In Loco Parentis.** An individual acting in loco parentis who is eligible to apply for child care benefits, and the child's natural or adoptive parents are not living in the home. ~~(4-2-08)~~ ( )

**06. Citizenship or Alien Status Requirement.** Family members who are not citizens or living lawfully in the United States will not be counted in the family size. The income of those non-counted family members will be counted when determining the household's income according to Sections 070 through 099 of these rules. ~~( )~~ ( )

**105. ELIGIBLE CHILD.**

A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions: (4-2-08)

**01. Immunizations Requirements.** A child must be immunized in accordance with IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." Child care benefits can continue during a reasonable period necessary for the child to be immunized. Parents must provide evidence that the child has been immunized unless the child is attending school. (4-2-08)

**02. Citizenship or Alien Status Requirement.** A child must be one (1) of the following: (4-2-08)

a. A citizen; (4-2-08)

b. Living lawfully in the United States. (4-2-08)

**03. Child's Age Requirement.** A child must be under thirteen (13) years of age, ~~with the following~~



~~exceptions:~~

~~(4-2-08)~~

~~a.~~ A child ~~thirteen (13) years of age or older may~~ to be eligible for child care benefits, ~~if~~ unless he meets one (1) or more of the following criteria: ~~(4-2-08)~~ ( )

~~a.~~ A child is eligible for child care benefits until the month of his ~~eighteenth~~ nineteenth birthday if he is physically or mentally incapable of self-care, as verified by a licensed mental health professional or licensed practitioner of the healing arts. ~~(4-2-08)~~ ( )

~~b.~~ A child may be eligible for child care benefits until the month of his ~~eighteenth~~ nineteenth birthday if a court order, probation order, child protection, or mental health case plan requires constant supervision. ~~(4-2-08)~~ ( )

~~b.~~ A child who is eligible under Subsection 105.03.a. of this rule may receive child care benefits until the month of his nineteenth birthday if he is a full-time student and is expected to complete secondary school no later than the month of his nineteenth birthday. ~~(5-1-11)~~ ( )

**04. Child Custody.** A child may move from one (1) parent's home to the other parent's home on a regular basis. The child may be a member of either household, but not both households. If the parents cannot agree on the child's household for the child care benefit, the child is included in the household with primary custody. Primary custody is determined by where the child is expected to spend fifty-one percent (51%) or more of the nights during a benefit period. When only one (1) parent applies for ICCP benefits, the child may be included in that parent's household even though they do not have primary physical custody of the child. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.**

To be eligible for child care benefits, each parent included in the household must need child care because they are engaged in one (1) of the qualifying activities listed in Subsections 200.01 through 200.05 of this rule. (5-1-11)

**01. Employment.** The parent is currently employed. (4-2-08)

**02. Self-Employment.** The parent is currently self-employed in a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. Restrictions apply for self-employment as follows: (5-8-09)

a. For the first ~~six (6)~~ twelve (12) months of self-employment benefits, actual activity hours are used. ~~(5-1-11)~~ ( )

b. ~~After receiving six (6) months of self-employment child care benefits~~ At the time of redetermination, the number of activity hours will be limited. To calculate the activity hours, the ~~gross~~ net monthly self-employment income is divided by the current federal minimum wage. The qualifying activity hours are the lesser of the calculated activity hours or actual activity hours. ~~(5-1-11)~~ ( )

**03. Training or Education.** The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: (4-2-08)

a. On-line classes cannot be counted as a qualifying activity for child care. (4-2-08)

b. Persons ~~with baccalaureate degrees or~~ who are attending post-baccalaureate classes with no other qualifying activity. do not qualify for child care benefits. ~~(4-2-08)~~ ( )

c. More than forty ~~-eight~~ (40) months of post-secondary education has been used as a qualifying activity. ~~(4-2-08)~~ ( )

**04. Preventive Services.** The parent is receiving preventive services as defined in Section 011 of these rules. The Department will verify the continued need for preventive services at least every three (3) months. (4-2-08)

**05. Personal Responsibility Contract (PRC) or Other Negotiated Agreement.** The parent is completing Personal Responsibility Contract (PRC) or other self-sufficiency activities negotiated between the Department and the parent. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. CESSATION OF QUALIFYING ACTIVITIES.**

An eligible family who loses or ceases its qualifying activity, may continue to receive assistance for up to three (3) months to engage in a job search and resume work, or resume attendance at a job training or educational program. ( )

~~2023.~~ -- 399. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. IN-HOME CARE HEALTH AND SAFETY REQUIREMENTS.**

Each in-home care provider is responsible to ensure that health and safety requirements are met for children being cared for in the children's own home. (3-20-14)

**01. Health and Safety Inspections.** In-home health and safety inspections, described in Section 802 of these rules, are not required for in-home care providers caring for children in the children's own home. (3-20-14)

**02. Health and Safety Training.** Because in-home care providers are exempt from health and safety inspections, each in-home care provider must annually complete health and safety training provided by the local Health District covering requirements listed in Section 802 of these rules. ~~(3-20-14)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. ALLOWABLE CHILD CARE COSTS.**

Care provided to an eligible child by an eligible child care provider is payable subject to the following conditions: (4-2-08)

**01. Payment for Employment, Training, Education, or Preventive Service Hours.** Child care must be reasonably related to the hours of the parent's qualifying activities. (5-1-11)

~~**02. Family Member or Guardian Not Payable.** A parent, step-parent, or unmarried parent will not be paid for providing child care to his child. A guardian will not be paid for providing child care to his ward. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment. (4-2-08)~~

~~**032. One-Time Registration Fees.** One-time fees for registering a child in a child care facility are payable above the local market rate, if the fee is charged to all who enroll in the facility. Fees may not exceed two hundred fifty dollars (\$250) and must be usual and customary rates charged to all families. Registration fees are separate from local market rates. (4-2-08)( )~~

~~**04. Local Market Rates (LMR) for Child Care.** The local market rates are the maximum monthly amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where~~

~~the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted biannually. However, due to budgetary considerations, the Department may opt not to update the rate structure following a survey.~~ (4-2-08)

**501. NON-ALLOWABLE CHILD CARE COSTS.**

Care provided to an eligible child is not payable under the following conditions: ( )

**01. Family Member or Guardian Providing Child Care.** A parent, step-parent, or unmarried parent will not be paid for providing child care to his child. A guardian will not be paid for providing child care to his ward. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment. ( )

**02. Provider Living at Same Address as Child.** ICCP will not pay for in-home child care if the provider lives at the same address as the child. ( )

**03. School Tuition, Academic Credit, or Tutoring.** ICCP payments will not be made for school tuition, academic credit, or tutoring for school age children; this includes: ( )

**a.** Any services provided to such students during the regular school day, including kindergarten; ( )

**b.** Any services for which such students receive academic credit toward graduation; or ( )

**c.** Any instructional services which supplant or duplicate the academic program of any public or private school. ( )

**502. AMOUNT OF PAYMENT.**

Child care payments will be based on Subsections 502.01 through 502.04 of this rule. (4-2-08)( )

**01. Payment Rate.** Payment will be based on the lower of the provider's usual and customary rates or the ~~L~~ocal ~~m~~arket ~~r~~ate (LMR). (7-1-09)( )

~~a. The local market rate is determined from a survey of providers' child care charges which is conducted every two years. The local market rate is set at the seventy fifth percentile and updated as the budget allows.~~ (4-2-08)

**a.** The local market rates for child care are the maximum monthly amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted triennially. ( )

**b.** ~~Each Region has a separate local market rate.~~ Payment rates will be determined by the location of the child care facility. (4-2-08)( )

**c.** If the child care facility is not in Idaho, the local market rate will be the rate where the family lives. (4-2-08)

~~d. The rate survey will be conducted at least every two (2) years.~~ (4-2-08)

**02. Usual and Customary Rates.** Rates charged by the child care provider must not exceed the usual and customary rates charged for child care to persons not entitled to receive benefits under ICCP. (7-1-09)

**03. In-Home Care.** Parents are responsible to pay persons providing care in the child's home the minimum wage, as required by the Fair Labor Standards Act (29 U.S.C. 206a) and other applicable state and federal requirements. Department payments must not exceed the lower of the hourly federal minimum wage or actual cost of care. (4-2-08)

04. **Payments.** Payments will be issued directly to eligible providers. ~~A warrant may be issued to a parent only when the parent provides proof the provider was paid in full, and no longer provides child care for the family.~~ (4-2-08)( )

**5023. ~~SLIDING FEE SCHEDULES~~ COPAYMENTS.**

Eligible families, except TAFI families participating in non-employment TAFI activities and guardians of foster children, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and ~~may~~ must not waive ~~or defer~~ these costs. (7-1-09)( )

01. **Poverty Rates.** Poverty rates will be one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-4-13)

02. **Calculating Family Payment.** Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment. (4-4-13)

**5034. STUDENT CO-PAYMENT REQUIREMENTS.**

01. **Post-Secondary Student.** (4-11-15)

a. A post-secondary student who works less than ten (10) hours per week will be required to pay a co-payment. (4-11-15)

b. A post-secondary student who works ten (10) hours or more per week will have a co-payment based on family income. (4-11-15)

02. **High School or GED Student.** A student who is in high school, or who is taking GED courses will have a co-payment based on family income. (4-11-15)

**5045. INTERIM CHILD CARE PAYMENT.**

~~A family that uses a relative provider is not eligible for interim child care payments.~~ If child care arrangements would otherwise be lost, child care may be paid ~~under the following conditions:~~ when a child temporarily stops attending child care for no longer than (1) calendar month and plans to return. (4-2-08)( )

~~01. **Break in Employment or Education.** During a break in employment or education of one (1) month or less.~~ (4-2-08)

~~02. **Children Temporarily Out of the Home.** While children are temporarily away from the home for a period of one (1) month or less.~~ (4-2-08)

**5056. -- 599. (RESERVED)**

**CHANGE REPORTING REQUIREMENTS FOR THOSE  
RECEIVING CHILD CARE BENEFITS  
(Sections 600 - 699)**

**600. CHANGE REPORTING REQUIREMENTS.**

A family who receives child care benefits must report the following permanent changes by the tenth day of the month following the month in which the change occurred. (4-4-13)

01. **Change in Eligible Activity Hours.** (4-4-13)

02. **Change in Your Permanent Address.** (5-1-11)

03. **Change in Household Composition.** (4-4-13)

04. Change in Income. ( )

**a.** When the household's total gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Guideline (FPG) for the household size. (4-4-13)

**b.** When the household's total gross income exceeds eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size. ( )

05. Change in Child Care Provider. (5-1-11)

(BREAK IN CONTINUITY OF SECTIONS)

602. REDETERMINATION OF ELIGIBILITY FOR CHILD CARE BENEFITS.

**01. Redetermination.** The Department must redetermine eligibility for child care benefits at least every ~~six (6)~~ twelve (12) months. ~~Eligibility must be redetermined every three (3) months for each family in which child care is needed for preventive services.~~ (4-4-13)( )

**02. Graduated Phase Out.** At the time of redetermination, if a household's income exceeds one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for family of the same size, but does not exceed eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size, benefits for eligible children will be paid for three (3) months in an amount equal to the payment amount of the 12th month of eligibility, if all other eligibility criteria are met. ( )

(BREAK IN CONTINUITY OF SECTIONS)

701. RECOUPMENT OF OVERPAYMENTS.

**01. Recoupment of Overpayments.** The Department may recoup or recover the amount paid for child care services from a provider. Interest will accrue on these overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. ~~Recoupment of an overpayment based on Department error may be collected from parents or providers when the overpayment is one hundred dollars (\$100), or more.~~ Interest will not accrue on overpayments made due to Department error. An overpayment due to family or provider error, IPV or fraud must be recovered in full. (7-1-09)( )

**02. Parental Repayment Requirement.** A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section 600 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department. (5-1-11)

(BREAK IN CONTINUITY OF SECTIONS)

750. TERMINATION OF PROVIDER STATUS.

Under Section 56-209h, Idaho Code, the Department may terminate the provider agreement of, or otherwise deny provider status for a period up to five (5) years from the date the Department's action becomes final to any individual or entity providing ICCP. (7-1-09)

**01. Submits an Incorrect Claim.** Submits a claim with knowledge that the claim is incorrect. (7-1-09)

- 02. Fraudulent Claim.** Submits a fraudulent claim. (7-1-09)
- 03. Knowingly Makes a False Statement.** Knowingly makes a false statement or representation of material facts in any document required to be maintained or submitted to the Department. (7-1-09)
- 04. Immediate Access to Documentation.** Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained. (7-1-09)
- 05. Non-Compliance With Rules and Regulations.** Fails repeatedly or substantially to comply with the rules and regulations governing Idaho child care payments. (7-1-09)
- 06. Violation of Material Term or Condition.** Knowingly violates any material term or condition of the provider agreement. (7-1-09)
- 07. Failure to Repay.** Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement. (7-1-09)
- 08. Fraudulent or Abusive Conduct.** Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct ~~in connection with the delivery of child care services.~~ (7-1-09)( )
- 09. Failure to Meet Qualifications.** Fails to meet the qualifications specifically required by rule or by any applicable licensing entity. (7-1-09)
- 10. Committed an Offense or Act Not in Best Interest of Child Care Participants.** The provider has committed an offense or act which the Department determines is inconsistent with the best interests of ICCP participants. ( )
- 751. REFUSAL TO ENTER INTO AN AGREEMENT.**  
The Department may refuse to enter into a provider agreement for the reasons described in Subsections 751.01 through 751.06 of this rule. (7-1-09)
- 01. Convicted of a Felony.** The provider has been convicted of a felony ~~relating to their involvement in a public assistance program or of a crime listed in Section 805 of these rules~~ or is under investigation for the commission of a felony. (7-1-09)( )
- 02. Committed an Offense or Act Not in Best Interest of Child Care Participants.** The provider has committed an offense or act which the Department determines is inconsistent with the best interests of ICCP participants. (7-1-09)
- 03. Failed to Repay.** The provider has failed to repay the Department monies which had been previously determined to have been owed to the Department. (7-1-09)
- 04. Investigation Pending.** The provider has a pending investigation for program fraud or abuse. (7-1-09)
- 05. Terminated Provider Agreement.** The provider was the managing employee, officer, ~~or~~ owner, or spouse, partner, or relative of an owner of an entity whose provider agreement was terminated under Section 750 of these rules. (7-1-09)( )
- 06. Excluded Individuals.** The provider has a current exclusion from participation in federal programs by the Office of Inspector General List of Excluded Individuals and Entities. (7-1-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**801. LIMIT ON PROVIDER PAYMENT.**

~~ICCP will not pay for in-home child care if the provider lives at the same address as the child, unless the child care provider is a relative who is not acting "in loco parentis." A roommate, significant other, cousin, or any other individual that lives in the same home as the child will not be paid for providing child care.~~ (4-2-08)

**801. HEALTH AND SAFETY TRAINING.**

All child care providers must complete a series of health and safety trainings during an orientation period of not more than ninety (90) days, in addition to ongoing annual training that address each of the following topics: ( )

01. **Infectious Diseases.** The prevention and control of infectious diseases (including immunization). ( )
02. **Sudden Infant Death Syndrome.** The prevention of sudden infant death syndrome and use of safe sleeping practices. ( )
03. **Medication.** The administration of medication, consistent with standards for parental consent. ( )
04. **Allergic Reactions.** The prevention of and response to emergencies due to food and allergic reactions. ( )
05. **Environmental Safety.** Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic. ( )
06. **Child Abuse Prevention.** Prevention of shaken baby syndrome and abusive head trauma. ( )
07. **Emergency Preparedness.** Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event. ( )
08. **Hazardous Substances.** Proper handling, storage, and disposal of medicines, cleaning supplies, and other hazardous substances, including biocontaminants. ( )
09. **Transportation.** Appropriate precautions in transporting children, including the use of child safety restraints and seat belts. ( )

**802. HEALTH AND SAFETY REQUIREMENTS.**

All providers must comply with the health and safety requirements listed in Subsections 802.01 through 802.14<sup>1</sup> of this rule. All providers must agree to an annual, unannounced health and safety inspection, with the exception of in-home child care described in Section 401 of these rules. Compliance with these standards does not exempt a provider from complying with stricter health and safety standards under state law, tribal law, local ordinance, or other applicable law. (3-20-14)( )

- 01. Age of Provider.** All child care providers providing services must be eighteen (18) years old or older. Persons sixteen (16) or seventeen (17) years old may provide child care if they have direct, on-site supervision from a licensed child care provider who is at least eighteen (18) years old. (4-2-08)
- 02. Sanitary Food Preparation.** Food for use in child care facilities must be prepared and served in a sanitary manner. Utensils and food preparation surfaces must be cleaned and sanitized before using to prevent contamination. (4-2-08)
- 03. Food Storage.** All food served in child care facilities must be stored to protect it from potential contamination. (4-2-08)
- 04. Hazardous Substances.** Medicines, cleaning supplies, and other hazardous substances must be handled safely and stored out of the reach of children. Biocontaminants must be disposed of appropriately. (4-2-08)( )



05. **Emergency Communication.** A telephone or some type of emergency communication system is required. (4-2-08)

06. **Smoke Detectors, Fire Extinguishers, and Exits.** A properly installed and operational smoke detector must be on the premises where child care occurs. Adequate fire extinguishers and fire exits must be available on the premises. (4-2-08)

07. **Hand Washing.** Each provider must wash his hands with soap and water at regular intervals, including before feeding, after diapering or assisting children with toileting, after nose wiping, and after administering first aid. (4-2-08)

08. **CPR/First Aid.** Providers must insure that at all times children are present at least one (1) adult on the premises has current certification in pediatric rescue breathing (CPR) and pediatric first aid treatment from a certified instructor. (4-2-08)( )

09. **Health of Provider.** Each provider must certify that he does not have a communicable disease or any physical or psychological condition that might pose a threat to the safety of a child in his care. (4-2-08)

10. **Child Abuse.** Providers must report suspected child abuse to the appropriate authority. (4-2-08)

11. **Transportation.** Providers who transport children as part of their child care operations must operate safely and legally, using child safety restraints and seat belts as required by state and local statutes. ( )

12. **Disaster and Emergency Planning.** Providers must have documented policies and procedures planning for emergencies resulting from a natural disaster, or man-caused event that include: ( )

a. **Evacuation, relocation, shelter-in-place, and lock-down procedures, and procedures for communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions. ( )**

b. **Procedures for staff and volunteer emergency preparedness training and practice drills. ( )**

c. **Guidelines for the continuation of child care services in the period following the emergency or disaster. ( )**

13. **Environmental Safety.** Building and physical premises must be safe, including identification of and protection from hazards that can cause bodily injury including electrical hazards, bodies of water, and vehicular traffic. ( )

**803. ~~TEMPORARY REGISTRATION OF AN ICCP PROVIDER APPLICANT.~~**

~~The Department may issue a temporary registration to an ICCP provider applicant pending completion of the necessary health and safety inspections, CPR/First Aid Certification, and Department criminal history and background check. A temporary ICCP registration may be issued under the following conditions: (4-9-09)~~

~~01. **Length of Temporary Registration.** A temporary registration will be issued for a period of time not to exceed ninety (90) days, unless otherwise extended by the Department. (4-2-08)~~

~~02. **Applicants Must Sign a Provider Agreement.** All ICCP provider applicants must sign the ICCP provider agreement prior to issuance of a temporary registration. (4-2-08)~~

~~03. **Self Disclosure.** Individuals age thirteen (13) or older who have direct contact with or provide direct care to children receiving ICCP benefits, must self disclose all arrests and convictions pending satisfactory completion of the criminal history and background check. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, a temporary registration will not be issued. (4-9-09)~~

**803. **CHILD CARE PROVIDER TRAINING REQUIREMENTS.****



Each child care provider must receive and ensure that each staff member who provides child care receives and completes twelve (12) hours of ongoing training every twelve (12) months after the staff member's date of hire. ( )

**01. Training Contents.** Training must be related to continuing education in child development, teaching and curriculum, health and safety, and business practices. The following will not count towards the required twelve (12) hours of annual training: ( )

**a.** Pediatric rescue breathing (CPR) and pediatric first aid treatment training; and ( )

**b.** Trainings related to participation with the Child and Adult Care Food Program (CACFP). ( )

**02. Documented Training.** It is the responsibility of the child care provider to ensure that each staff member who provides child care has completed twelve (12) hours of training each year. The training must be documented in the staff member's record. ( )

**03. Staff Training Records.** Each child care provider is responsible for maintaining documentation of staff's training and must produce this documentation when the provider agreement is renewed annually. ( )

#### 804. CHILD CARE PROVIDER AGREEMENT.

**01. Compliance.** All providers must sign and comply with a provider agreement. ~~(4-2-08)~~ ( )

**02. Provide Direct Care.** Except for Child Care Centers described in Subsection 101.01 of these rules, the individual who signs the provider agreement must provide the majority of direct care to the children in that child care facility. ( )

#### 805. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENT.

Applicants, providers, employees, volunteers, and all other individuals age thirteen (13) or older who have direct contact with or provide care to children eligible for ICCP benefits must comply with the requirements and receive clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks," every five (5) years. ~~(4-2-08)~~ ~~(4-9-09)~~ ( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 807. PARENT OR CARETAKER ACCESS TO CHILD CARE PREMISES.

Providers serving families who receive a child care subsidy ~~shall~~ must allow parents or caretakers unlimited access to their children and to persons giving care, except that access to children will not be required if prohibited by court order. ~~(4-2-08)~~ ( )

#### 808. REPORTING REQUIREMENTS FOR PROVIDERS.

A child care provider must report any of the following changes within ten (10) days: (4-2-08)

**01. Change in Provider Charges.** The provider changes any rate for child care services. (4-2-08)

**02. Child Stops Attending Care.** A child covered under ICCP stops attending child care, or is taken to another child care provider. (4-2-08)

**03. Change of Provider Address.** The provider changes the location where child care is provided. (4-2-08)

**04. Change in Who Lives in Home.** An individual who provides child care in his home must report when any other person moves into the home. (4-2-08)

**05. Intent Not to Renew License.** The provider intends not to renew his license, or other required

certifications.

(4-2-08)

06. **Death or Serious Injury.** Providers must report when a child sustains a serious injury or dies while at the location of, or as a result of participating in child care. ( )

809. ~~(RESERVED)~~ **CONSUMER EDUCATION INFORMATION.**  
The Department will make public by electronic means, in an easily accessible format: ( )

01. **Monitoring and Inspection Reports.** The results of all child care monitoring and inspection reports. ( )

02. **Substantiated Complaints.** Substantiated complaints about failure to comply with child care laws, rules, and policies, that include information on the date of such an inspection, and where applicable, information on corrective action taken. ( )

03. **Death and Serious Injury.** The total number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year. ( )

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

### **16.07.19 – BEHAVIORAL HEALTH CERTIFICATION OF PEER SUPPORT SPECIALISTS AND FAMILY SUPPORT PARTNERS**

#### **DOCKET NO. 16-0719-1601 (NEW CHAPTER)**

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

**EFFECTIVE DATE:** The pending rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting this rule as a temporary rule. The action is authorized pursuant to Title 39, Chapter 31, Idaho Code.

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

The Department has adopted this new chapter of rule for the certification of peer support specialists and family support partners as a temporary rule. This chapter provides the qualifications and requirements needed to become certified by the Department for Behavioral Health support services.

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice. Changes have been made in the pending rule based on comments received and for clarification. The original text of the proposed rule was published in the October 5, 2016, Idaho Administrative Bulletin, [Vol. 16-10, pages 479 through 491](#).

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

This chapter of rules necessary to protect the public health, safety or welfare of vulnerable individuals with behavioral or mental health issues to ensure these provider types are qualified and meet the official and professional standards of these rules.

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

There is no anticipated fiscal impact to the state general fund or any other funds for this rule change. This rulemaking is intended to be cost neutral.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact Treena Clark, (208) 334-6611.

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](mailto: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 Title 39, Chapter 31, Idaho Code.

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

**Friday, October 21, 2016 - 11:00 am (MDT)**

**Department of Health & Welfare  
Central Office  
450 W. State Street  
3rd Floor Conference Room 3A  
Boise, ID**

**TELECONFERENCE CALL-IN**

**Toll Free: 1-866-906-9888 -- Participant Code: 5082829**

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

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

The Department is proposing this new chapter of rule for certification of peer support specialists and family support partners. This chapter provides for the qualifications and requirements needed to be certified by the Department for Behavioral Health support services. This new chapter includes:

1. Qualifications and Requirements needed for certification;
2. Administration for certification including enforcement and actions for denial, revocation, or suspension; and
3. Required sections needed to meet the Administrative Procedures Act and Rules of the Office of Administrative Rules.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. This rulemaking is intended to be cost neutral.

**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 45 and 46](#).

**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 Treena Clark, (208) 334-6611.

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 30th day of August, 2016.

**LSO Rules Analysis Memo**

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

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0719-1601**

**IDAPA 16**  
**TITLE 07**  
**CHAPTER 19**

**16.07.19 - BEHAVIORAL HEALTH CERTIFICATION OF PEER SUPPORT SPECIALISTS  
AND FAMILY SUPPORT PARTNERS**

**000. LEGAL AUTHORITY.**

Under Title 39, Chapter 31, Idaho Code, the Idaho Legislature has delegated to the Department of Health and Welfare as the state behavioral health authority the establishment, maintenance, and oversight of the state of Idaho's behavioral health services. Section 39-3140, Idaho Code, authorizes the Department to promulgate and enforce rules to carry out the purposes and intent of the Regional Behavioral Health Services Act. Under Sections 56-1003, 56-1004, Idaho Code, the Director of the Department is authorized to adopt and enforce rules to supervise and administer mental health programs. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.07.19, "Behavioral Health Certification of Peer Support Specialists and Family Support Partners." ( )

**02. Scope.** These rules establish the minimum qualifications and requirements for certification of peer support specialists and family support partners in Idaho including enforcement actions. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of these rules, or to the documentation of compliance with these rules. These documents are available for public inspection as described in Sections 005 and 006 of these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

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

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter of rules. ( )

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

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

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

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

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

**05. Internet Website.** The Department's internet website at <http://www.healthandwelfare.idaho.gov>. ( )

**06. Mental Health Services Website.** The Mental Health Services internet website at <http://www.mentalhealth.idaho.gov>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.**

**01. Confidentiality of Records.** Records relating to an inquiry into an individual's fitness to be granted or retain a behavioral health certification will be released in compliance with Section 74-106(9), Idaho Code, and IDAPA 16.05.01, "Use and Disclosure of Department Records." These records will otherwise be provided in redacted form as required by law or rule. ( )

**02. Public Records.** The use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." Unless otherwise exempted by state or federal law, all public records in the custody of the Department are subject to disclosure. ( )

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

**010. DEFINITIONS.**

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

**01. Behavioral Health Program.** A behavioral health program refers to an organization offering mental health or substance use disorders treatment services that includes the organization's facilities, management, staffing patterns, treatment, and related activities. ( )

**02. Certificate.** A certificate issued by the Department to an individual who is a behavioral health peer support specialist or a family support partner who the Department deems to be in compliance with these rules. ( )

**03. Department.** The Idaho Department of Health and Welfare, or its designee. ( )

**04. Director.** The Director of the Department of Health and Welfare, or designee. ( )

**05. Family Support Partner.** An individual who has lived experience raising a child who has a behavioral health disorder diagnosis, *mental illness, or mental illness with a co-occurring substance use disorder*, has specialized training related to such care, and who has successfully navigated the various systems of care. ( )

**06. Family Support Partner Services.** Family-to-family services are non-clinical support services

provided by family support partners who have participated in mental health services, and who have received training in how to share their experiences with others facing similar challenges. ( )

**07. Lived Experience.** Life experiences of an individual who has received behavioral health services or has raised a child who is living with a behavioral health diagnosis, *mental illness, or mental illness with a co-occurring substance use disorder*, and has at least one (1) year of lived experience navigating the behavioral health systems. ( )

**08. Peer Support Services.** Non-clinical services are provided by peer support specialists who are on their own recovery journey, and who have received training in supporting others who are actively involved in their own recovery process. ( )

**09. Peer Support Specialist.** An individual in recovery from mental illness or mental illness with a co-occurring substance use disorder who uses lived experience and specialized training to assist other individuals in recovery. ( )

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

**100. APPLICATION FOR CERTIFICATION.**

An applicant for any certification by the Department must furnish the following information prior to any certification being issued. ( )

**01. Completed Application.** Each applicant must complete and sign an application for certification on forms approved by the Department. ( )

**02. Verification of Education, Training, and Experience.** Each applicant must provide verification to the Department of the following: ( )

**a.** A copy of his high school diploma, GED certificate, or a Bachelor's degree in a human services field; ( )

**b.** Documentation of successful completion of training required for the certification being sought according to the requirements in Sections 200 and 300 of these rules; and ( )

**c.** A summary of work or volunteer experience, including documentation of supervised hours. ( )

**03. Code of Ethics Acknowledgment.** Each applicant must submit a signed and dated Code of Ethics Acknowledgment. ( )

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

**110. TYPES OF CERTIFICATION.**

**01. Peer Support Specialist.** ( )

**02. Family Support Partner.** ( )

**111. DURATION OF CERTIFICATION.**

**01. Six-Month Certification.** A six (6) month certification applies to an applicant that has completed the requirements in Sections 200 and 300 of these rules for initial certification, but may be lacking work or volunteer experience and supervised hours. ( )

**02. Full Certification.** A full certification applies to an applicant that has completed all requirements in Sections 200 and 300 of these rules for certification, including work or volunteer experience and supervised hours. Full certification is valid for one (1) year. ( )

**112. RENEWAL OF CERTIFICATION.**

**01. Submit Renewal Application.** Each certified peer support specialist or certified family support partner who is seeking certification renewal must submit a completed renewal application prior to expiration of current certificate. ( )

**02. Continuing Education.** Each certified peer support specialist or certified family support partner must provide documentation of a minimum of ten (10) hours of continuing education as follows: ( )

**a.** Continuing education must be obtained in competency areas listed in training requirements germane to the type of certification being renewed; and ( )

**b.** At least one (1) hour of continuing education for each renewal period must be in ethics. ( )

**03. Code of Ethics Acknowledgment.** Each certified peer support specialist or certified family support partner must submit a signed and dated Code of Ethics Acknowledgment. ( )

**113. -- 119. (RESERVED)**

**120. RECIPROCITY.**

An applicant for a peer support specialist or a family support partner certificate must be a holder of a current and active license or certificate at the level for which certification is sought, and be in good standing in the profession, and with the other state who is the authorizing regulatory entity for licensure or certification. ( )

**01. Completed Application.** Each applicant must complete and sign an application for reciprocity on forms approved by the Department. ( )

**02. Provide Verification of Education, Training, and Experience.** Each applicant seeking reciprocity must provide the Department with the following: ( )

**a.** Education experience summary; ( )

**b.** Continuing education/training hours received since certification; ( )

**c.** Statement of personal experience; and ( )

**d.** Work or volunteer experience summary form with documentation of supervised hours. ( )

**03. Code of Ethics Acknowledgment.** Each applicant seeking reciprocity must submit a signed and dated Code of Ethics Acknowledgment. ( )

**04. Documentation From Other State.** Documentation of licensure or certification must be received from the other state's issuing regulatory agency. The other state's licensing or certification requirements must be substantially equivalent to, or higher than, those required in this chapter of rules. ( )

**121. -- 149. (RESERVED)**

**150. INACTIVE STATUS.**

A certified peer specialist or certified family support partner, in good standing, may request an inactive status due to an inability to meet recertification requirements related to a decline in physical, mental health, or extenuating circumstances. ( )

**01. Request for Inactive Status.** An individual who is certified must submit a request in writing to the Department asking for inactive status. ( )

**02. Inactive Certification Status.** The Department may grant inactive status to a certified individual for up to one (1) year. ( )



**03.      Reactivation of Certification.** When the individual desires to reactivate status, a new application and documentation of fulfillment of continuing education requirements for the previous twelve (12) months must be submitted to the Department. (    )

**151. -- 199.      (RESERVED)**

**200.      PEER SUPPORT SPECIALIST -- CERTIFICATION QUALIFICATIONS AND REQUIREMENTS.** Each applicant must be at least eighteen (18) years of age and meet the minimum qualifications and requirements listed below to be certified as a Peer Support Specialist in Idaho. (    )

**01.      Educational Requirements.** Each applicant for a peer support specialist *certification* must have, at a minimum, a high school diploma or GED certificate. (    )

**02.      Training Requirements.** Each applicant must complete a minimum of forty (40) hours of training *that, at a minimum, includes* the following Peer Support Specialist competency areas: (    )

- a.      *Motivation and empowerment;*** (    )
- b.      The stages of recovery and the role peers play within it;** (    )
- c.      The state behavioral health system and the role peers play within it;** (    )
- d.      Advocacy for recovery programs and for the peers they serve;** (    )
- e.      The practice of recovery values: authenticity, self-determination, diversity, and inclusion;** (    )
- f.      How to *tell your recovery story and* use your story to help others;** (    )
- g.      Ethics;** (    )
- h.      The *awareness* of risk factors in participants' behaviors and *the ability to access appropriate services;*** (    )
- i.      The use of interpersonal and professional communication skills;** (    )
- j.      *Stages of change;*** (    )
- k.      Work place dynamics and processes;** (    )
- l.      The Certified Peer Support Specialist's roles and duties on the job;*** (    )
- m.      Relationship building;*** (    )
- n.      Family dynamics;*** (    )
- o.      The effects of trauma and use of a trauma informed approach;*** (    )
- p.      Wellness and natural supports;*** (    )
- q.      Boundaries and self-care;*** (    )
- r.      Cultural sensitivity;*** (    )
- s.      Recovery plans; and*** (    )
- t.      Local, state, and national resources.*** (    )

**03. Work or Volunteer Experience Requirements.** Each applicant must obtain supervised experience providing peer support services. A six (6) month certification may be granted according to Section 111 of these rules to an applicant who lacks the required experience. ( )

**a.** An applicant who holds a bachelor's degree in a human services field must document one hundred (100) hours of peer support specialist experience. ( )

**b.** An applicant who does not hold a bachelor's degree in a human support services field must document two hundred (200) hours of peer support specialist experience. ( )

**c.** An applicant must document at a minimum twenty (20) hours of supervised *peer support services* work or volunteer experience. ( )

**04. Supervision Requirements.** A six (6) month certification may be granted according to Section 111 of these rules to an applicant who lacks the required work or volunteer supervision hours required in Subsection 200.03 of this rule. ( )

**05. Person Self-Identified with Lived Experience.** Each applicant must identify as an individual with lived experience in recovery from mental illness or mental illness with a co-occurring substance use disorder. ( )

**201. -- 249. (RESERVED)**

**250. PEER SUPPORT SPECIALISTS -- CODE OF ETHICS AND PROFESSIONAL CONDUCT.**

**01. Peer Support.** Peer Support is a helping relationship between mental health clients and Certified Peer Support Specialists. The primary responsibility of Certified Peer Support Specialists is to help those they serve achieve self-directed recovery. They believe that every individual has strengths and the ability to learn and grow. ( )

**02. Certified Peer Support Specialists.** Certified peer support specialists are committed to providing and advocating for effective recovery-based services for the people they serve in order for these individuals to meet their own needs, desires, and goals. ( )

**03. Certified Peer Support Specialist Professional Conduct.** A certified peer support specialist must: ( )

**a.** Seek to role-model recovery; ( )

**b.** Respect the rights and dignity of those they serve; ( )

**c.** Respect the privacy and confidentiality of those they serve; ( )

**d.** Openly share their personal recovery stories with colleagues and those they serve; ( )

**e.** Maintain high standards of personal conduct and conduct themselves in a manner that fosters their own recovery; ( )

**f.** Never intimidate, threaten, or harass those they serve; never use undue influence, physical force, or verbal abuse with those they serve; and never make unwarranted promises of benefits to those they serve; ( )

**g.** Not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of ethnicity, race, gender, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical disability; ( )

**h.** Never engage in sexual/intimate activities with colleagues or those they serve; ( )

- i. Not accept gifts of significant value from those they serve; ( )
- j. Not enter into dual relationships or commitments that conflict with the interests of those they serve; ( )
- k. Not abuse substances under any circumstances while they are employed as a Certified Peer Support Specialist; ( )
- l. Work to equalize the power differentials that may occur in the peer support/client relationship; ( )
- m. Ensure that all information and documentation provided is true and accurate to the best of their knowledge; ( )
- n. Keep current with emerging knowledge relevant to recovery, and openly share this knowledge with their colleagues and those they serve; ( )
- o. Remain aware of their skills and limitations, and do not provide services or represent themselves as expert in areas for which they do not have sufficient knowledge or expertise; and ( )
- p. Not hold a clinical role nor offer primary treatment for mental health issues, prescribe medicine, act as a legal representative or provide legal advice, participate in the determination of competence, or provide counseling, therapy, social work, drug testing, or diagnosis of symptoms and disorders. ( )

**04. Ethics Training.** A certified peer support specialist must complete ethics training at least once per year, and maintain personal documentation of completed ethics training. ( )

**05. Comply with Code of Ethics.** A certified peer support specialist must understand and comply with these rules and Idaho's Certified Peer Support Specialists Code of Ethics and Professional Conduct. ( )

**251. -- 299. (RESERVED)**

**300. FAMILY SUPPORT PARTNER -- CERTIFICATION QUALIFICATIONS AND REQUIREMENTS.**

Each applicant must be at least eighteen (18) years of age and meet the minimum qualifications and requirements listed below to be certified as a family support partner in Idaho. ( )

**01. Educational Requirements.** Each applicant for a family support partner *certification* must have, at a minimum, a high school diploma or GED certificate. ( )

**02. Training Requirements.** Each applicant must complete a minimum of forty (40) hours of training *that includes, at a minimum,* the following Family Support Partner competency areas: ( )

- a. Overview of mental illness and substance use disorders and their effects on the brain; ( )
- b. Advocacy skills used in multiple systems (children's behavioral health system, education and special education system, child welfare system, and juvenile court system); ( )
- c. Ethics; ( )
- d. The awareness of risk factors in participants' behaviors and the ability to access appropriate services; ( )
- e. The use of interpersonal and professional communication skills; ( )
- f. *Stages of change*; ( )

- g.**     *Motivation and* empowerment;     (   )
- h.**     Parenting special needs children and family dynamics;     (   )
- i.**     The recovery process;     (   )
- j.**     The effects of trauma and use of a trauma-informed approach;     (   )
- k.**     Wellness and natural supports;     (   )
- l.**     Family-centered planning;     (   )
- m.**     *Boundaries and self-care;*     (   )
- n.**     Cultural sensitivity;     (   )
- o.**     *The children's mental health system;*     (   )
- p.**     *How to tell your story and use your story to help others;*     (   )
- q.**     *The child and family team and how to be a team player;*     (   )
- r.**     *Work place dynamics and process;*     (   )
- s.**     *The Certified Family Support Partner's role and duties on the job;*     (   )
- t.**     *Relationship building;*     (   )
- u.**     Recovery plans; and     (   )
- v.**     Local, state, and national resources.     (   )

**03. Work or Volunteer Experience Requirements.** Each applicant must obtain supervised experience providing family support services. A six (6) month certification may be granted according to Section 111 of these rules to an applicant who lacks required experience.     (   )

**a.**     An applicant that holds a bachelor's degree in a human services field must document one hundred (100) hours of family support partner experience.     (   )

**b.**     An applicant that does not hold a bachelor's degree in a human support services field must document two hundred (200) hours of family support partner experience.     (   )

**c.**     An applicant must document at a minimum twenty (20) hours of supervised *family support services* work or volunteer experience.     (   )

**04. Supervision Requirements.** A six (6) month certification may be granted according to Section 111 of these rules to an applicant who lacks the required work or volunteer supervision hours required in Subsection 300.03 of this rule.     (   )

**05. Person Self-Identified with Lived Experience.** Each applicant must identify as an individual with lived experience as a parent or adult caregiver who is raising a child or has raised a child who lives with a mental illness or mental illness with a co-occurring substance use disorder.     (   )

**301. -- 349. (RESERVED)**

**350. FAMILY SUPPORT PARTNERS -- CODE OF ETHICS *AND PROFESSIONAL CONDUCT.***

**01. Family Support Principles.** These family support principles are intended to serve as a guide for certified family support partners and those who are working toward full certification in their everyday professional conduct that includes various roles, relationships, and levels of responsibilities within their jobs. ( )

**02. Certified Family Support Partner Integrity.** In order to maintain high standards of competency and integrity, a certified family support partner must: ( )

**a.** Apply the principles of resiliency, wellness and recovery, or both, family-driven approach, youth-guided or youth-driven approach, consumer-driven approach, and peer-to-peer mutual-learning principles in every day interactions with family members; ( )

**b.** Promote the family member's ethical decision-making and personal responsibility consistent with that family member's culture, values, and beliefs; ( )

**c.** Promote the family members' voices and the articulation of their values in planning and evaluating children's behavioral health related issues; ( )

**d.** Teach, mentor, coach, and support family members to articulate goals that reflect each family member's current needs and strengths; ( )

**e.** Demonstrate respect for the cultural-based values of the family members engaged in peer support; ( )

**f.** Communicate information in ways that are both developmentally and culturally appropriate;( )

**g.** Empower family members to be fully informed in preparing to make decisions and understand the implications of these decisions; ( )

**h.** Maintain high standards of professional competence and integrity; ( )

**i.** Abstain from discriminating against or refusing services to anyone on the basis of race, ethnicity, gender, gender identity, religion/spirituality, culture, national origin, age, sexual orientation, marital status, language preference, socioeconomic status, or disability; ( )

**j.** Only assist family members whose concerns are within *one's* competency as determined by *one's* education, training, experience, and on-going supervision or consultation; ( )

**k.** Abstain from establishing or maintaining a relationship for the sole purpose of financial remuneration to *self* or the agency *with which one is* associated; and ( )

**l.** Terminate a relationship when it becomes reasonably clear that the peer relationship is no longer the desire of the family member. ( )

**03. Certified Family Support Partner Safety.** In order to maintain the safety of all family members involved with family support services, a certified family support partner must: ( )

**a.** Comply with all laws and regulations applicable to the jurisdiction in which the peer support services are provided, including confidentiality; ( )

**b.** Maintain confidentiality in personal and professional communication and ensure that family members have authorized *the* use or release of any and all information about themselves or family members for whom they have legal authority, including verbal statements, writings, or re-release of documents; ( )

**c.** Respect the privacy of *partner* agencies and not distribute internal or draft documents or share private, internal conversations; ( )

d. When complying with laws and regulations involving mandatory reporting of harm, abuse, or neglect, make every effort to involve the family members in the planning for services and ensure that no further harm is done to family members as the result of the reporting; ( )

e. Discuss and explain to family members the rights, roles, expectations, benefits, and limitations of the peer support process; ( )

f. Avoid ambiguity in the relationship with family members and ensure clarity of *the certified family support partner's* role at all times; ( )

g. Maintain a positive relationship with family members, refraining from premature or unannounced ceasing of the relationship until a reasonable alternative arrangement is made for continuation of similar peer support services; ( )

h. Abstain from engaging in intimate, emotional, or physical relationships with family members engaged in a peer support relationship; ( )

i. Neither offer nor accept gifts, other than token gifts, related to the professional service of peer support, including personal barter services, payment for referrals, or other remunerations; and ( )

j. Abstain from engaging in personal financial transactions with family members engaged in a peer support relationship. ( )

**04. Certified Family Support Partner Professional Responsibility.** Through educational activities, supervision and personal commitment, a certified family support partner must: ( )

a. Stay informed and up-to-date with regard to the research, policy, and developments in the field of parent/peer support and children's emotional, developmental, behavioral (including substance use), or mental health which relates to *one's* own practice area and children's general health and wellbeing; ( )

b. Engage in helping relationships that include skills-building, not exceeding *one's* scope of practice, experience, training, education, or competence; ( )

c. Perform or hold *oneself* out as competent to perform only peer services not beyond *one's* education, training, experience, or competence; ( )

d. Seek appropriate professional supervision/consultation or assistance for *one's* personal problems or conflicts that may impair or affect work/volunteer performance or judgment; ( )

e. File a complaint with the certification body for Family Support Partners when *one has* reason to believe that another family support partner is, or has been, engaged in conduct that violates the law or these rules. Making a complaint to the certification body for Family Support Partners is an additional requirement, not a substitute for, or alternative to, any duty of filing reports required by statute or regulation; ( )

f. Refrain from distorting, misusing, or misrepresenting *one's* experience, knowledge, skills, or research findings; ( )

g. Refrain from financially or professionally exploiting a colleague or representing a colleague's work, associated with the provision of peer support or the profession of peer support, as *one's* own; ( )

h. In the role of a supervisor/consultant, be responsible for maintaining the quality of *one's* own supervisory/consultation skills and obtaining supervision/consultation for work as a supervisor/consultant; ( )

i. In the role of a researcher, be aware of and comply with federal and state laws and regulations, agency regulations, and professional standards governing the conduct of research, including ensuring the participants' complete informed consent for participating or declining to participate in a study; and ( )

j. In the role as a volunteer, member, or employee of an organization, give credit to persons for published or unpublished original ideas, take reasonable precautions to ensure that *one's* employer or affiliate organization promotes and advertises materials accurately and factually. ( )

05. **Ethics Training.** A certified family support partner must complete ethics training at least once per year, and maintain personal documentation of completed ethics training. ( )

06. **Comply with Code of Ethics.** A certified family support partner must understand and comply with these rules and Idaho's Certified Family Support Partners Code of Ethics. ( )

**351. -- 399. (RESERVED)**

**400. SUPERVISOR FOR PEER SUPPORT SPECIALIST OR FAMILY SUPPORT PARTNER -- QUALIFICATIONS AND REQUIREMENTS.**

An individual must meet the following requirements to provide supervision to a peer support specialist or family support partner. ( )

01. **Bachelor's Degree or Higher.** In order to supervise a peer support specialist or family support partner, an individual must hold a bachelor's degree or higher in a human services field. ( )

02. **Supervisory Position.** An individual must be in a supervisory position and work in that capacity within the agency. ( )

**401. -- 499. (RESERVED)**

**500. COMPLAINTS.**

A complaint is an informal process to address the concerns of an individual. Any individual may file a written complaint or concern with the Department regarding a *certified* peer *support* specialist, *certified* family support partner, or a behavioral health program. ( )

01. **Complaint Content.** A complaint must include: ( )

a. The full name, mailing address, phone number, and email contact for the person reporting the complaint; ( )

b. A description of the nature of the complaint, including the desired outcome. ( )

02. **Department Response to Complaint.** The Department will respond to the complaint within thirty (30) days of receipt of the complaint. This process may include gathering additional information from involved parties, including the complainant. ( )

**501. -- 509. (RESERVED)**

**510. GRIEVANCES.**

A grievance is a type of complaint about the certification decision that has been made following application to the Department. When an applicant is denied certification, questions the results of the application review process, or is subject to an action that he deems unjustified, the applicant may submit a written grievance to the Department. ( )

01. **Grievance Content.** The grievance must include: ( )

a. The full name, mailing address, phone number, and email contact for the person reporting the grievance; and ( )

b. A detailed explanation of the decision that is being contested, from the perspective of the complainant, including any steps already taken to resolve the issue. ( )

02. **Department Response to Grievance.** The Department will respond within sixty (60) days of

receipt of the grievance. This process may include gathering additional information from involved parties. ( )

**511. -- 519. (RESERVED)**

**520. DENIAL, REVOCATION, OR SUSPENSION OF CERTIFICATION.**

The Department may deny, suspend, or revoke an individual's application, certification, or recertification as a peer support specialist or family support partner for noncompliance with these rules. ( )

**521. -- 524. (RESERVED)**

**525. IMMEDIATE DENIAL, REVOCATION, OR SUSPENSION.**

The Department may deny, revoke, or suspend a certification or recertification, without prior notice, when conditions exist that endanger the health and safety of any participant. ( )

**526. -- 529. (RESERVED)**

**530. REASONS FOR DENIAL, REVOCATION, OR SUSPENSION.**

An individual may have a certification denied, revoked, or suspended for any one (1) of the reasons listed below. ( )

**01. Failure to Comply.** Failure to comply with these rules and the code of ethics described in Sections 250 and 350 of these rules. ( )

**02. Failure to Provide Information.** Failure to provide information requested by the Department. ( )

**03. Failure to Perform.** Inadequate knowledge or performance that is demonstrated by repeated substandard peer or quality assurance reviews. ( )

**04. Misrepresentation of Information Provided.** Misrepresentation by the applicant in an application, or in documents required by the Department for certification. ( )

**05. Conflict of Interest.** Conflict of interest in which a certified individual exploits his position as a Certified Peer Support Specialist or a Certified Family Support Partner for personal benefit. ( )

**06. Negligent Performance or Fraud.** A criminal, civil, or administrative determination that a certified individual has committed fraud or gross negligence in his capacity as a Certified Peer Support Specialist or Certified Family Support Partner. ( )

**07. Failure to Correct.** Failure to correct within thirty (30) days of written notice, any unacceptable conduct, practice, or condition as determined by the Department. ( )

**531. -- 534. (RESERVED)**

**535. APPEAL OF DEPARTMENT DECISION.**

An applicant or certificate holder may appeal a Department decision to deny, suspend, or revoke a certification according to IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**536. -- 539. (RESERVED)**

**540. REAPPLICATION FOR CERTIFICATION.**

Following a denial, suspension, or revocation of certification or recertification, the same applicant may not reapply for certification for a period of six (6) months after the effective date of the action. ( )

**541. -- 999. (RESERVED)**



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

### **16.07.37 – CHILDREN'S MENTAL HEALTH SERVICES**

**DOCKET NO. 16-0737-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective July 1, 2017, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, 56-1004A.

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

The Department is adopting a new assessment tool in compliance with the Jeff D lawsuit. Language in the eligibility section of this chapter is being revised to allow for implementation of this new tool.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin.

The amendments to the pending rule clarify the requirement that a parent or guardian must sign the treatment plan, and if not, the reason must be documented. Also, regarding voluntary placement, the reference to notification of the court by the Department in the case of the revocation of a placement agreement was removed since the courts are not involved in voluntary placements. The complete text of the proposed rule was published in the October 5, 2016, Idaho Administrative Bulletin, [Vol. 16-10, pages 492 through 512](#).

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

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Stephanie Hoffman at (208) 334-6559.

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](mailto: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 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, 56-1004A.

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

**Monday, October 17, 2016 - 11:00 am (MDT)**

**Department of Health & Welfare  
Central Office  
450 W. State Street  
3rd Floor Conference Room 3A  
Boise, ID**

**TELECONFERENCE CALL-IN**

**Toll Free: 1-866-906-9888  
Participant Code: 5082829**

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

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

The Department is adopting a new assessment tool in compliance with the Jeff D lawsuit. Language in the eligibility section of this chapter is being revised to allow for implementation of this new tool.

The Department no longer accesses federal child welfare funding for children's mental health services and has adjusted alternate care practices in response to the change in funding. Federal child welfare requirements are no longer applicable and no longer need to be included in the rule.

1. This chapter is being updated to reflect the adoption of the Child and Adolescent Needs and Strengths (CANS) assessment tool as specified in the Jeff D court-approved implementation plan.
2. References to federal child welfare requirements in the Alternate Care sections of the chapter which are no longer applicable are being deleted and the language updated to reflect current practice.
3. Finally, throughout the chapter, "clean-up" changes are being made that make technical or clerical corrections, or minor clarifications of existing language.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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:

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and was deemed not feasible. These proposed rule changes really only effect the Department and were vetted with Department staff from the effected Divisions. However, the new assessment tool was negotiated with representative stakeholders through the Jeff D mediation and implementation planning process.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, is incorporated in this chapter and is being updated from the Fourth Edition, to the Fifth Edition, (DSM-5).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Stephanie Hoffman at (208) 334-6559.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th 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 rule.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0737-1601**

**003. ADMINISTRATIVE APPEALS.**

**01. Appeal from a Denial Based on Eligibility Criteria.** Administrative appeals from a denial of children's mental health services based on the eligibility criteria under Section ~~4~~107 of these rules are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (5-8-09)( )

**02. Appeal of Decision Based on Clinical Judgment.** All decisions involving clinical judgment, which may include the category of services, the particular provider of services, or the duration of services, are reserved to the Department, and are not subject to appeal, administratively or otherwise, in accordance with Maresh v. State, 132 Idaho 221, 970 P.2d 14 (Idaho 1999). (5-8-09)

**004. INCORPORATION BY REFERENCE.**

American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth~~ Fifth Edition, ~~Text Revision~~ (DSM-~~IV-TR~~5), Washington, D.C., American Psychiatric Association, 200013, is hereby incorporated by reference under this chapter of rules. Copies of the manual are available from the American Psychiatric Association, ~~1400 K Street, N.W., Washington, DC, 20005~~ 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209-3901. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.**

For the purposes of these rules, the following terms apply: (5-8-09)

**01. Alternate Care.** Temporary living arrangements outside the family home which may include licensed foster care, residential treatment, and other facilities licensed by the state to provide twenty-four (24) hour care for children in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," or IDAPA 16.03.14, "Rules and Minimum Standards for Hospitals in Idaho." (5-8-09)

**02. Alternate Care Plan.** A ~~federally required~~ component of the treatment plan for children in alternate care. The alternate care plan contains elements related to ~~reasonable efforts~~ the justification of the need for Alternate Care Placement, the provision of treatment plan while in Alternate Care Placement, the child's alternate care provider, ~~compelling reasons for not terminating parental rights, Indian status,~~ education, immunization, medical and other information important to the day-to-day care of the child. ~~An alternate care plan is part of the treatment plan for children placed in alternate care.~~ (5-8-09)( )

**03. Area(s) of Concern.** A circumstance or circumstances that brought a child and family to the attention of the Department. (5-8-09)

**04. Assessment.** The gathering of historical and current clinical information through a clinical interview and from other available resources to identify the child's mental health issues, the child's strengths, the family's strengths, and the service needs. (5-8-09)

**05. Behavioral Health.** An integrated system for evaluation and treatment of mental health and substance use disorders. ( )

~~056.~~ **Case Management.** A change-oriented service provided to families that assures and coordinates the provision of an assessment, treatment planning, treatment and other services, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (5-8-09)

~~067.~~ **Case Record.** Compilation of all electronic and hard copy documentation relating to a child who is receiving or has received children's mental health services including legal documents, identifying information, and assessments. (5-8-09)

~~078.~~ **Child.** An individual who is under the age of eighteen (18) years. (5-8-09)

~~089.~~ **Children's Mental Health Services.** The children's mental health services are listed under Section ~~4100~~ of these rules. These services are provided in response to the mental health needs of children eligible for services under Section ~~4107~~ of these rules and their families in accordance with the provisions of the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code. (5-8-09)( )

~~0910.~~ **Clinician.** Any of the direct service personnel with a Master's degree working in regional Children's Mental Health programs, including master's level social workers, psychologists, counselors, and family therapists. (5-8-09)

~~101.~~ **Crisis Intervention.** A set of planned activities for a child eligible for services under Section ~~4107~~ of these rules designed to reduce the risk of life-threatening harm to self or another person. (5-8-09)( )

**12. Crisis Plan.** As part of the treatment plan, the individualized crisis plan is developed to prevent a crisis or prepare for a crisis situation and to keep the child and others safe. The crisis plan may include the child's trigger behaviors, preferred strategies for resolving a crisis, interventions to be avoided, and contact information of community resources and natural supports. ( )

~~143.~~ **Crisis Response.** A service for a child that involves immediate actions taken to assess risk or intervene in an emergency as defined in Section 16-2403(6), Idaho Code. A determination of eligibility under Section ~~4107~~ of these rules is not required for crisis response. (5-8-09)( )

**124. Day Treatment Services.** Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational, and family interventions provided on a regularly scheduled, typically daily,

basis. (5-8-09)

**135. Department.** The Idaho Department of Health and Welfare or its designee. The Department is designated as the State ~~Mental~~ Behavioral Health Authority under Section 39-312~~43~~, Idaho Code. ~~(5-8-09)~~( )

**146. Desired Result.** Behaviorally-specific description of the child's and family's circumstances when the factors that brought the child and family to the Department's attention, either no longer exist or are significantly reduced. (5-8-09)

**157. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (5-8-09)

**168. Emergency.** Emergency, as defined in Section 16-2403(6), Idaho Code, means a situation in which the child's condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the child, his family or others, or poses a serious risk of substantial deterioration in the child's condition which cannot be eliminated by the use of supportive services or intervention by the child's parents, or mental health professionals, and treatment in the community while the child remains in his family home. (5-8-09)

**179. Extended Family Member of an Indian Child.** As defined by the law or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, second cousin, or stepparent. (5-8-09)

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**

For the purposes of these rules, the following terms apply: (5-8-09)

**01. Face-to-Face Contact.** An interaction between Department staff and another individual. The interaction may occur in-person or by electronic means that includes both audio and visual technology that comply with HIPAA and 42 CFR Part 2. ( )

**042. Family.** A family is two (2) or more persons related by blood, marriage, or adoption. (5-8-09)

**023. Family Support Services.** Assistance provided to a family to assist them in caring for a child eligible for services under Section ~~4~~107 of these rules. The purpose of family support services is to strengthen adults in their role as parents through the provision of services including: assistance with transportation, family counseling services, training, education, and emergency assistance funds in accordance with IDAPA 16.06.13, "Rules Governing Emergency Assistance for Families and Children." Family support services must be on the treatment plan. ~~(5-8-09)~~( )

**034. Federal Poverty Guidelines.** Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found online at <http://aspe.hhs.gov/poverty/>. (5-8-09)

**045. Guardian.** (5-8-09)

**a.** As set forth under Title 15, Chapter 5, Part 2, Idaho Code, an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child; or (5-8-09)

**b.** The Department, an agency, or an individual, other than a parent, who is acting in the place of a parent (in loco parentis) or, has assumed legal responsibility for, legal custody of, or control of a child. (5-8-09)

~~**05. Independent Living.** Services provided to eligible foster or former foster youth ages fifteen (15) to twenty one (21) designed to support a successful transition to adulthood.~~ (5-8-09)

**06. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 USC 1606. (5-8-09)

- 07. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (5-8-09)
- a.** A member of an Indian tribe; or (5-8-09)
  - b.** Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (5-8-09)
- 08. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 USC 1901, et seq. (5-8-09)
- 09. Indian Child's Tribe.** (5-8-09)
- a.** The Indian tribe in which an Indian child is a member or eligible for membership; or (5-8-09)
  - b.** In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (5-8-09)
- 10. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 USC 1602(c). (5-8-09)
- 11. Inpatient Services.** Mental health and medical services provided to a child admitted to a psychiatric hospital. (5-8-09)
- 012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.** (5-8-09)  
For the purposes of these rules, the following terms apply:
- 01. Licensed.** Facilities or programs that are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," or hospitals licensed in accordance with IDAPA 16.03.14, "Rules and Minimum Standards for Hospitals in Idaho." (5-8-09)
- 02. Medicaid.** Idaho's Medical Assistance Program administered under Title XIX of the Social Security Act. (5-8-09)
- 03. Outpatient Services.** Mental health services provided to a child who is not admitted to a psychiatric hospital or in a residential treatment setting. (5-8-09)
- 04. Parent.** A person who, by birth or through adoption, is considered legally responsible for a child. The term "guardian" is not included in the definition of parent. (5-8-09)
- ~~**05. P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (5-8-09)~~
- ~~**06. P.L. 105-89.** Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997," amends P.L. 96-272 and prohibits states from delaying or denying cross jurisdictional adoptive placements with an approved family. (5-8-09)~~
- ~~**07. Reasonable Efforts.** A court determination that the Department offered or provided services to a family intended to assist a child eligible for services under Section 407 of these rules to remain in the family home, return to the family home, or to finalize a permanency plan. (5-8-09)~~
- 05. Placement Agreement.** A standardized, written agreement, signed by the Department and a parent or guardian, that outlines specific responsibilities of each party regarding the child's placement in alternate care. ( )
- ~~**086. Residential Treatment.** A treatment facility licensed as a children's residential care facility that provides twenty-four (24) hour care in a highly-structured setting delivering substitute parental care and mental health services. (5-8-09)~~

**097. Respite Care.** Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a caregiver different from ~~his~~ the child's usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days.

(5-8-09)( )

**013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.**

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

(5-8-09)

**01. Sliding Fee Scale.** A scale used to determine an individual's cost for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules."

(5-8-09)

**02. Teens at Risk.** Individuals attending Idaho secondary public schools who have been identified by school personnel or their designee as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance ~~ab~~use, or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or a substance ~~ab~~use disorder.

(5-8-09)( )

**03. Teen Early Intervention Specialist.** A person with a master's degree in social work, psychology, marriage and family therapy, counseling, chemical dependency, addictive studies, psychiatric nursing, or very closely-related field of study contracted to work with teens at risk.

(5-8-09)

~~**04. Title IV-E.** Title IV-E under the Social Security Act provides funding for foster care maintenance and adoption assistance payments for certain eligible children.~~

(5-8-09)

~~**054. Title XIX (Medicaid).** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources.~~

(5-8-09)

~~**065. Treatment Foster Care.** A service that provides clinical intervention for children eligible for services under Section 4107 of these rules within the private homes of trained, licensed foster families.~~

(5-8-09)( )

~~**076. Treatment Plan.** A written and signed agreement between the Department and a parent or guardian that serves as the guide for the provision of services. The individualized treatment plan contains describes the child's strengths and needs, short and long-term treatment goals, areas of concern, desired results outcomes, and task responsibilities, including payment for services the roles, strategies, resources, and timeframes for coordinated implementation of services and supports. The plan; is developed with the child, when possible, and the child's parent or guardian clearly identifies who does what, when, and how. The treatment plan includes a crisis plan and plans for transitioning out of services or to adult services. The treatment plan also includes the alternate care plan, if the child is in alternate care.~~

(5-8-09)( )

~~**08. Voluntary Placement Agreement.** A standardized written agreement signed by a parent or guardian and the Department that outlines specific responsibilities of each party and authorizes the Department to place a child in alternate care.~~

(5-8-09)

**097. Wraparound.** Wraparound is a planning process that brings together a team of professionals and citizens working together to support children eligible for services under Section 4107 of these rules and their families. Members of the team include the child, family members, representatives of public and private agencies, civic groups, and other community members. The services and supports focus on the strengths of the child and family, are provided in the local community, and are customized to fit the individual culture of the family.

(5-8-09)( )

**014. -- 099. (RESERVED)**

**GENERAL PROVISIONS FOR CHILDREN RECEIVING  
MENTAL HEALTH SERVICES AND THEIR FAMILIES**  
(Sections 100 – 399)



**100. GENERAL REQUIREMENTS FOR CHILDREN AND FAMILIES.**

~~01. Reasonable Efforts. The Department must document services offered or provided to a family to assist a child eligible for services under Section 407 of these rules to remain in the family home, return to the family home, or finalize a permanency plan. The court will make the determination of whether or not the Department's efforts were reasonable. (5-8-09)~~

~~02. Least Restrictive Setting. Whenever possible, the Department will arrange placement: (5-8-09)~~

~~a. In the least restrictive setting available that will meet the child's mental health treatment needs; and (5-8-09)~~

~~b. That is in close proximity to the parent or guardian. (5-8-09)~~

~~c. If the placement does not meet the requirements of Subsections 100.02.a. and 100.02.b. of this rule, the Department will provide written justification to the child's parent or guardian that the placement is in the best interests of the child. (5-8-09)~~

~~03. Visitation for Child's Parent or Guardian. Visitation arrangements will be documented in the alternate care plan. (5-8-09)~~

~~04. Notification of Change in Placement. (5-8-09)~~

~~a. The Department will provide written notification to the child's parent or guardian no later than seven (7) days after a child's change of placement. (5-8-09)~~

~~b. If an Indian child under jurisdiction of the court is relocated to another alternate care setting, similar notice must be sent to the child's Indian custodian, and the child's tribe. Wherever these rules require notice to the parent or custodian and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310 SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who will provide notice to the parent or Indian custodian and tribe. (5-8-09)~~

**101. TREATMENT PLAN DEVELOPMENT.**

~~01. Development of Treatment Plan. A treatment plan will be completed within fifteen (15) days of the date the child was determined eligible for Children's Mental Health services. The parent or guardian will be given the opportunity to participate in the development of the treatment plan and to sign it. If the services are court ordered and the parent or guardian refuses to sign the plan, the reason for their refusal will be documented on the plan. If the services are voluntary and the parent or guardian refuses to sign the plan, the Department may close the case. (5-8-09)~~

~~02. Annual Development of Treatment Plan. The Department will develop a plan at least annually. The parent or guardian will be given the opportunity to participate in the annual development of the treatment plan and to sign it. (5-8-09)~~

~~03. One Hundred Twenty Day Review. Treatment plans are to be reviewed with the family at least once every one hundred twenty (120) days. (5-8-09)~~

~~04. Goals and Tasks. Treatment plans must include a long-term goal that identifies specific behavior changes, has measurable desired results, and has specific tasks that identify who, how, and when the tasks will be completed. (5-8-09)~~



~~102. — 104.~~ (RESERVED)

~~105.~~ CASE RECORDS.

~~01. Electronic and Physical Files. The Department must maintain an electronic file and a physical file containing information on each child receiving children's mental health services. The physical file may include non-electronic documentation such as originals or copies of all court orders, birth certificates, social security cards and assessment information which originates outside the Department. (5-8-09)~~

~~02. Storage of Records. All physical case records must be stored in a secure file storage area, away from public access and retained not less than five (5) years after the case is closed, after which they may be destroyed. (5-8-09)~~

~~a. Exception for Adoption Records. Complete family case records involving adoptive placements must be forwarded to the Department's central adoption unit for permanent storage. (5-8-09)~~

~~b. Exception for Case Records Involving an Indian Child. A case record involving an Indian child must be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. (5-8-09)~~

~~106. — 399.~~ (RESERVED)

CHILDREN'S MENTAL HEALTH SERVICES  
(Sections ~~4100-4199~~)

~~4100.~~ CHILDREN'S MENTAL HEALTH SERVICES.

The Department is the lead agency in establishing and coordinating community supports, services, and treatment for children eligible for services under Section ~~4107~~ of these rules and their families. The following services, as defined under Sections 010 through 013 of these rules, are provided by or through Children's Mental Health field offices in each region: ~~(5-8-09) ( )~~

- |                |                                |                     |
|----------------|--------------------------------|---------------------|
| 01.            | Assessment.                    | (5-8-09)            |
| 02.            | Case Management.               | (5-8-09)            |
| 03.            | Crisis Response.               | (5-8-09)            |
| 04.            | Day Treatment Services.        | (5-8-09)            |
| 05.            | Family Support Services.       | (5-8-09)            |
| <del>06.</del> | <del>Independent Living.</del> | <del>(5-8-09)</del> |
| <del>07.</del> | Inpatient Services.            | (5-8-09)            |
| <del>08.</del> | Outpatient Services.           | (5-8-09)            |
| <del>09.</del> | Residential Treatment.         | (5-8-09)            |
| <del>10.</del> | Respite Care.                  | (5-8-09)            |
| <del>11.</del> | Treatment Foster Care.         | (5-8-09)            |
| <del>12.</del> | Wraparound.                    | (5-8-09)            |

~~4101.~~ TEENS AT RISK PROGRAM.

The Teens at Risk program is for individuals attending Idaho secondary public schools who have been identified by

school personnel or their designee as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance use, or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or a substance use disorder. The Department may enter into contracts for Teens at Risk programs in cooperation with Idaho public school districts subject to Department appropriations and available funding for this program. The Department reserves the right to make the final determination to award a school district a Teens at Risk contract. (5-8-09)

**01. Application.** School districts may apply to the Department through a competitive application process. The Department will provide written information to the State Department of Education and interested school districts on the amount of funding available, closing date for submission of applications, and information on how to obtain application forms and instructions by July 1 of each year that funding is available. Only applications submitted on the prescribed forms and consistent with Department instructions will be considered for evaluation. (5-8-09)

**02. Contracting Process.** (5-8-09)

**a.** A team comprised of at least one (1) Department staff person, a representative from the state Department of Education, a representative from the local school district, and a parent, will evaluate the applications from school districts for contracts for Teens at Risk programs. The evaluation criteria will include the demonstrated need for the program in the school district and the contribution the school district is providing to the program, with a preference for rural school districts. The Department will consider the team recommendations and make the final determination of contracts for Teens at Risk programs. (5-8-09)

**b.** The number of school districts awarded a Teens at Risk program will depend upon the amount of specific funding appropriated by the legislature for this program. (5-8-09)

**c.** The Department will enter into a written contract with each school district awarded a Teens at Risk program. The contract will set forth the terms, services, data collecting, funding, and other activities prior to the implementation of the program. (5-8-09)

**03. Services.** Teen early intervention specialists hired or under contract with the school district will be available to serve teens at risk within the school setting and offer group counseling, recovery support, suicide prevention and other mental health and substance use disorder counseling services as needed. Teens at risk who are not enrolled in public schools may only participate in services if assigned by a judge and with the permission of the local school administrator who administers the Teens at Risk program. Parents of teens participating in the Teens at Risk program will not incur a financial obligation for services provided by the program. (5-8-09)

**04. Outcomes.** The Department will gather data and evaluate the effectiveness of the Teens at Risk program. In accordance with Section 16-2404A(7), Idaho Code, the Department may contract with state universities or colleges to assist in the identification of appropriate data elements, data collection, and evaluation. Data elements used to evaluate the program may include: (5-8-09)

- a.** Teen arrests, detention, and commitments to state custody; (5-8-09)
- b.** Teen suicide rates; (5-8-09)
- c.** Impacts on juvenile mental health and drug courts; (5-8-09)
- d.** Access to mental health services; and (5-8-09)
- e.** Academic achievement and school disciplinary actions. (5-8-09)

~~4102.~~ -- ~~4104.~~ **(RESERVED)**

~~4105.~~ **ACCESSING CHILDREN'S MENTAL HEALTH SERVICES.**

Children's mental health services may be accessed either through an application for services or through a court order for services. An application for services must be signed by a child's parent or guardian. (5-8-09)

**4106. MENTAL HEALTH ASSESSMENT.**

Once an application has been signed or a court order has been received for children's mental health services, the Department will schedule and conduct a mental health assessment. Each mental health assessment will be documented using the Department's Idaho Standard Mental Health Assessment Report at <http://www.healthandwelfare.idaho.gov>. A Department clinician will either complete a mental health assessment, or, at the Department's discretion, accept an assessment completed by another mental health professional. In order to be considered, assessments completed by other mental health professionals must have occurred within ninety (90) days prior to the date of application or court order. The Department clinician will gather additional information, as needed, in order to complete the assessment process. (5-8-09)

**4107. ELIGIBILITY DETERMINATION.**

**01. The Department Determines Eligibility for Mental Health Services.** The total number of children who are eligible for mental health services through the Department will be established by the Department. The Department may, in its sole discretion, limit or prioritize mental health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (4-7-11)

**02. Eligibility Requirements.** To be eligible for children's mental health services through a voluntary application to the Department, the applicant must: (5-8-09)

- a. Be under eighteen (18) years of age; (5-8-09)
- b. Reside within the state of Idaho; (5-8-09)
- c. Have a DSM-~~IV~~ TR5 Axis I diagnosis. A substance use disorder alone, or developmental disorder alone, does not constitute an eligible Axis I diagnosis, although one (1) or more of these conditions may co-exist with an eligible Axis I diagnosis; and ~~(5-8-09)~~ ( )
- d. Have a substantial functional impairment as assessed by using the ~~Child and Adolescent Functional Assessment Scale (CAFAS) or the Preschool and Early Childhood Functional Assessment Scale (PECFAS)~~ Department's approved tool. Substantial functional impairment requires a full eight (8) (CAFAS) or seven (7) (PECFAS) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: ~~(4-7-11)~~ ( )

- ~~i. Self-harmful behavior;~~ ~~(5-8-09)~~
- ~~ii. Moods/emotions; or~~ ~~(5-8-09)~~
- ~~iii. Thinking.~~ ~~(5-8-09)~~

**03. Court-Ordered Assessment, Treatment, and Services.** The court may order the Department to provide assessment, treatment, and services under the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code and the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code. Subject to court approval, the Department will make efforts to include parents and guardians in the assessment, treatment, and service planning process. Parents or guardians retain custody of the child. ~~(5-8-09)~~ ( )

**04. Ineligible Conditions.** A child who does not meet the requirements under Subsections ~~4107.02~~ or ~~4107.03~~ of this rule is not eligible for children's mental health services, other than crisis response. A child with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services" or IDAPA 16.04.11, "Developmental Disabilities Agencies," for substance use or developmental disability services. ~~(4-7-11)~~ ( )

**4108. -- 4109. (RESERVED)**

**4110. NOTICE OF DECISION ON ELIGIBILITY.**

**01. Notification of Eligibility Determination.** The Department will determine the child's eligibility for children's mental health services, in accordance with Section ~~4~~107 of these rules, within thirty (30) calendar days of receipt of a signed application for services. Within five (5) working days of the determination of eligibility, the Department will send written notification to the child's parent or guardian of the eligibility determination. The written notice will include: ~~(5-8-09)~~ ( )

- a. The child's name and identifying information; (5-8-09)
- b. A statement of the decision; (5-8-09)
- c. A concise statement of the reasons for the decision; and (5-8-09)
- d. The process for pursuing an administrative appeal regarding eligibility determinations. (5-8-09)

**02. Parental Rights.** If the Department determines that an applicant is eligible for children's mental health services through the Department, the Department clinician must inform the child's parent or guardian that they have the right to reject the services offered by the Department, unless imposed by court order. (5-8-09)

**03. Other Information that Must be Provided to the Parent.** The clinician must also inform the parent that fees may be incurred for certain services, in accordance with IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," and that a parent has financial responsibility for the child. (5-8-09)

**04. Reapplication for Mental Health Services.** If the Department determines that a child is not eligible for children's mental health services through the Department, the child's parent or guardian may reapply after six (6) months or at any time upon a showing of a substantial, material change in circumstances. (5-8-09)

~~4~~11. -- ~~4~~14. (RESERVED)

~~4~~15. TREATMENT PLAN.

A treatment plan will be developed by the Department, a parent or guardian, and the child, if appropriate, and may include the service provider or service providers. This plan will be specific, measurable, and realistic in the identification of the goal(s), relevant areas of concern, and desired results, ~~and will be developed in accordance with the requirements under Section 101 of these rules.~~ ~~(5-8-09)~~ ( )

**01. Development of Treatment Plan.** A treatment plan will be completed within fifteen (15) days of the date the child was determined eligible for children's mental health services. The parent or guardian must be given the opportunity to participate in the development of the treatment plan and sign it. The parent or guardian must sign the treatment plan indicating their agreement with service needs identified and their participation in its development. If these signatures, indicating participation in the development of the treatment plan are not obtained, the reason the signatures were not obtained must be documented in the record, including the reason for the parent's or guardian's refusal to sign. If the services are court-ordered and the parent or guardian refuses to sign the plan, the refusal must also be documented on the plan. If the services are voluntary and the parent or guardian refuses to sign the plan, the Department may close the case. ( )

**02. Annual Development of Treatment Plan.** The Department will develop a plan at least annually. The parent or guardian will be given the opportunity to participate in the annual development of the treatment plan and to sign it. ( )

**03. One Hundred Twenty Day Review.** Treatment plans are to be reviewed with the family at least once every one hundred twenty (120) days. ( )

**04. Goals and Tasks.** Treatment plans must include a long-term goal that identifies specific behavior changes, have measurable desired results, and have specific tasks that identify by whom, how, and when the tasks will be completed. ( )

~~4~~16. OUTCOMES FOR CHILDREN'S MENTAL HEALTH SERVICES.

Outcomes for children's mental health services are measured through the administration of a satisfaction survey and ~~a~~ the Department-approved standardized functional assessment tool, ~~such as CAFAS or PECFAS.~~ (5-8-09)(    )

**117. CASE RECORDS.**

**01. Electronic and Physical Files.** The Department must maintain an electronic file and a physical file containing information on each child receiving children's mental health services. The physical file may include non-electronic documentation such as originals or copies of all court orders, birth certificates, social security cards, and assessment information that originates outside the Department. (    )

**02. Storage of Records.** All physical case records must be stored in a secure file storage area away from public access, and retained not less than five (5) years after the case is closed, after which they may be destroyed. (    )

**a. Exception for Adoption Records.** Complete family case records involving adoptive placements must be forwarded to the Department's central adoption unit for permanent storage. (    )

**b. Exception for Case Records Involving an Indian Child.** A case record involving an Indian child must be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. (    )

**~~417~~118. USE OF PUBLIC FUNDS AND BENEFITS.**

Public funds and benefits will be used to provide services for children eligible for services under Section ~~4~~107 of these rules and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, the Department will arrange services to minimize the need for institutional or alternate care placement. Services will be individually planned with the family to meet the unique needs of each child and family. The Department will not require a parent or guardian to relinquish custody of the child in order to receive Department-funded services. (5-8-09)(    )

**~~418~~119. FINANCIAL RESPONSIBILITY OF PARENT(S).**

Parent(s) of a child eligible for services under Section ~~4~~107 of these rules who is receiving outpatient services either directly from the Department or through Department contracts with private providers, are financially responsible for services provided to their child and to their family, including court-ordered children's mental health services. The financial responsibility for each service will be in accordance with the ability of parent(s) to pay as determined under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." Parent(s) will not incur a financial obligation for services provided to their child through a Teens at Risk program. (5-8-09)(    )

**~~419~~120. SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH OUTPATIENT SERVICES.**

The fee charged to parents for outpatient children's mental health services is determined using the sliding fee schedule under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 300. (5-8-09)

**~~420~~121. FEE DETERMINATION FOR CHILDREN'S MENTAL HEALTH OUTPATIENT SERVICES.**

Prior to the delivery of outpatient services, a "Fee Determination" form must be completed by a child's parent when requesting children's mental health services. The fee determination process includes the considerations found under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 400. (5-8-09)

**~~421~~122. -- ~~4~~199. (RESERVED)**

**ALTERNATE CARE PLACEMENT**  
(Sections ~~5~~200 - ~~5~~299)

**~~5~~200. AUTHORITY FOR ALTERNATE CARE PLACEMENT.**

The Department may place a child into alternate care under either of the following conditions in Subsection ~~5~~200.01 or ~~5~~200.02 of this rule: (5-8-09)(    )

**01. Court Order.** The Department may place a child into alternate care when the Department has been

ordered by the Court to provide alternate care for a child. ~~or. A placement agreement must be developed by the Department and the parent or guardian prior to the child's placement in alternate care. The treatment plan will identify areas of concern, goals, desired outcomes, time frames, tasks, and task responsibilities. The placement agreement entered into between the Department and a parent or guardian may be revoked with a twenty-four (24) hour notice by the child's parent or guardian. If notice is given by the parent or guardian, the Department will notify the court.~~ (5-8-09)( )

**02. Voluntary Placement.** The Department may place a child into alternate care with the Department when a parent or guardian is no longer able to maintain a child eligible for services under Section 4107 of these rules in the child's home and the Department determines that the child would benefit from alternate care and treatment services. A treatment plan, alternate care plan, and a ~~voluntary~~ placement agreement must be developed by the Department and the parent or guardian prior to the child's placement in alternate care. The treatment plan will identify areas of concern, goals, desired ~~results~~ outcomes, time frames, tasks and task responsibilities. The placement agreement entered into between the Department and a parent or guardian may be revoked with a twenty-four (24) hour notice by the child's parent or guardian. (5-8-09)( )

~~a. A voluntary placement agreement entered into between the Department and a parent or the guardian of a minor child may be revoked at any time by the child's parent or guardian.~~ (5-8-09)

~~b. Voluntary alternate care placements exceeding one hundred eighty (180) days, without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. The Department may request the court hold a hearing for the child in accordance with 16-2407(3), Idaho Code.~~ (5-8-09)

## **201. PROTECTIONS FOR CHILDREN IN ALTERNATE CARE.**

**01. Statutory Requirements.** The Department must arrange alternate care in accordance with the protections established in: (5-8-09)

~~a. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980," as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997;~~ (5-8-09)

~~b.a.~~ The Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code; (5-8-09)

~~b.b.~~ The Child Protective Act, Title 16, Chapter 16, Idaho Code; and (5-8-09)

~~b.c.~~ The Indian Child Welfare Act, 25 USC 1901, et seq. (5-8-09)

**02. Requirement for Licensure.** A child that is placed in alternate care must be placed in a licensed foster home, licensed residential care facility, or in a licensed hospital. (5-8-09)

**03. Out-of-State Placement.** Placement of a child in an alternate care setting outside the state of Idaho requires that the Department comply with the Interstate Compact on the Placement of Children, in accordance with Section 16-2102, Idaho Code. (5-8-09)

**04. Least Restrictive Setting.** Whenever possible, the Department will arrange placement: ( )

a. In the least restrictive setting available that will meet the child's mental health treatment needs; and ( )

b. That is in close proximity to the parent or guardian. ( )

c. If the placement does not meet the requirements of Subsections 201.04.a. and 201.04.b. of this rule, the Department will provide written justification to the child's parent or guardian by way of the Alternate Care Plan that the placement is in the best interests of the child. ( )

**05. Visitation for Child's Parent or Guardian.** Visitation arrangements will be documented in the



alternate care plan. ( )

**06. Notification to Parents or Guardians of Change in Placement.** ( )

**a.** The Department will provide written notification to the child's parent or guardian no later than seven (7) days after a child's change of placement. ( )

**b.** If an Indian child under jurisdiction of the court is relocated to another alternate care setting, similar notice must be sent to the child's Indian custodian, and the child's tribe. Wherever these rules require notice to the parent or custodian and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310-SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who will provide notice to the parent or Indian custodian and tribe. ( )

**5202. (RESERVED)**

**5203. DATE A CHILD ENTERED ALTERNATE CARE.**

A child is considered to have entered alternate care on the date the child is actually placed in an alternate care setting. All alternate care benefits, eligibility determinations, and required reviews are based on the date the child entered alternate care. (5-8-09)

**5204. ~~TITLE IV-E AND~~ TITLE XIX ELIGIBILITY.**

Children placed in alternate care through the Department are eligible for ~~Title IV-E funding and~~ Title XIX, if they meet the eligibility requirements as defined in IDAPA 16.06.01, "Rules Governing Family and Children's Services." Application for these programs will be made by Department clinicians on the forms and in the manner prescribed by the Department's Division of Family and Community Services. (~~5-8-09~~)( )

**5205. ALTERNATE CARE LICENSURE.**

All private homes and facilities in Idaho providing alternate care for children under these rules must be licensed in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," unless foster care placement of an Indian child is made with a foster home licensed, approved, or specified by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. (5-8-09)

**5206. ALTERNATE CARE CASE MANAGEMENT.**

Case management must continue while the child is in alternate care and must include the following: (5-8-09)

**01. Preparation for Placement.** Preparing a child for placement in alternate care is the joint responsibility of the child's parent or guardian, the child (when appropriate), the clinician and the alternate care provider. (5-8-09)

**02. Information for Alternate Care Provider.** The Department and the child's parent or guardian must inform the alternate care provider of the alternate care provider's roles and responsibilities in meeting the needs of the child and provide the following information to the alternate care provider: (5-8-09)

**a.** Any medical, health, and dental needs of the child including the names and addresses of the child's doctor, dentist, and other health providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; (5-8-09)

**b.** The child's current functioning and behaviors; (5-8-09)

**c.** The child's history, past experiences, and reasons for placement into alternate care; (5-8-09)

**d.** The child's cultural and racial identity; (5-8-09)

- e. Any educational, developmental, or special needs of the child; (5-8-09)
- f. Names and addresses of the child's current or last school attended, including homeschool or alternate school, if applicable; (5-8-09)
- g. The child's interests and talents; (5-8-09)
- h. The child's attachment to current caretakers; (5-8-09)
- i. The individualized and unique needs of the child; (5-8-09)
- j. Procedures to follow in case of emergency; and (5-8-09)
- k. Any additional information that may be required to meet the needs of the child. (5-8-09)

**03. Consent for Medical Care.** A parent or guardian must sign a Departmental form of consent for medical care and keep the clinician advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the case record. (5-8-09)

**04. Financial Arrangements.** The ~~clinician~~ Department is responsible for explaining the financial and payment arrangements to the alternate care provider and must complete the documentation required for payment to the alternate care provider. ~~(5-8-09)~~( )

**05. Contact Requirements.** The child's parent or guardian, the clinician, the alternate care provider, and the child, if of appropriate developmental age, must establish a schedule for frequent and regular visits between the child and the family and the clinician or his designee. (5-8-09)

a. Face-to-face contact ~~in the alternate care or treatment setting~~ between the child and the clinician must occur at least monthly. An in-person visit must occur within the first thirty (30) days of placement and then the in-person visits must occur at a minimum of quarterly thereafter. ~~(5-8-09)~~( )

b. Face-to-face contact between the child's parent or guardian and the clinician must occur at least monthly. (5-8-09)

c. Face-to-face contact ~~in the alternate care or treatment setting~~ between the alternate care provider and the clinician must occur at least monthly. ~~(5-8-09)~~( )

d. Frequent and regular contact between the child, the child's parent or guardian, and other family members will be encouraged and facilitated unless it is specifically determined by the Department not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures and the use of video and other technology as may be relevant and available. (5-8-09)

e. When a child is placed in alternate care in another state, a Department clinician must maintain at least monthly contact with the child, the child's family, and the alternate care provider with whom he has been placed as long as the state of Idaho has the placement responsibility for the child, in accordance with Section ~~5200~~ of these rules. The supervising agency in the state where the child is living will be requested to maintain monthly, face-to-face contact with the child and make quarterly reports to the Department in accordance with arrangements made through the Interstate Compact on the Placement of Children. ~~(5-8-09)~~( )

**06. Transition Planning.** Planning for transition from alternate care will be developed with all concerned parties. Transition planning will be initiated at the time of placement and completed prior to the child's return home or to another living arrangement. A written Transition Plan is part of the Alternate Care Plan and the Treatment Plan. As part of transition planning, efforts are coordinated by the Department and the parents or guardians to expedite access to community and Department services. ~~(5-8-09)~~( )

~~**07. Accessing Services.** As part of the transition planning, efforts will be coordinated to expedite~~



~~access to community and Department services.~~

~~(5-8-09)~~

~~§207.~~ -- ~~§221.~~ (RESERVED)

~~§222.~~ **ALTERNATE CARE PLANNING.**

Alternate care planning is mandated by the provisions of Sections 471(a)(15) and 475, P.L. 96-272. (5-8-09)

**01. Alternate Care Plan Required.** Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. (5-8-09)

**a.** The purpose of the plan is to facilitate the provision of mental health treatment services and the safe return of the child to his or her own home as expeditiously as possible, or to make other permanent arrangements for the child if such return is not feasible. (5-8-09)

**b.** The alternate care plan must be included as part of the treatment plan. (5-8-09)

**02. Written Alternate Care Plan.** The Department must have completed a written alternate care plan within thirty (30) days after a child has been placed in alternate care. (5-8-09)

**a.** A parent or guardian and the child, to the extent possible, are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. (5-8-09)

**b.** The alternate care plan must include documentation that a parent or guardian has been provided written notification of: (5-8-09)

**i.** Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; (5-8-09)

**ii.** Any change of placement, when the child is relocated to another alternate care or institutional setting as soon as possible, but no later than seven (7) days after placement; and (5-8-09)

**iii.** Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements. (5-8-09)

**c.** All parties involved in developing the alternate care plan, including the alternate care provider, parent or guardian, and the child, if of appropriate developmental age: (5-8-09)

**i.** Will be asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and (5-8-09)

**ii.** Will receive a copy of the alternate care plan from the Department. (5-8-09)

~~§223.~~ -- ~~§235.~~ (RESERVED)

~~§236.~~ **PARENTAL FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.**

In accordance with Sections 56-203B and 16-2406, Idaho Code, parent(s) are responsible for costs associated with the care of their child in alternate care. (5-8-09)

**01. Notice of Parental Responsibility.** The Department will provide the parent(s) with written notification of their responsibility to contribute toward the cost of their child's support, treatment, and care, including clothing, medical, incidental, and educational costs. (5-8-09)

**02. Financial Arrangements with Parent(s).** Parent(s) are responsible to reimburse the Department for the costs of alternate care when their child is placed in alternate care in accordance with a court order or voluntary placement agreement. (5-8-09)

**a.** Parents are expected to contribute to the cost of their child's care, but parents will not be asked to

pay more than the actual cost of care, including clothing, medical, incidental and educational costs. (5-8-09)

b. The Department will refer the parent(s) to the Bureau of Child Support Services for support payment calculation and payment arrangements. (5-8-09)

**~~§~~237. SUPPORT AGREEMENTS AND SUPPORT ORDERS.**

**01. Support Agreement for Voluntary Placement.** If the placement is voluntary, a parent must sign a support agreement that specifies the amount of support to be paid to the Department, when it is to be paid, and the address to which it is to be paid. (5-8-09)

**02. Support Order for Payment of Involuntary Placement Costs.** In the case of a court-ordered placement, if no support agreement has been reached with a parent prior to the court hearing, the Department may request the Court hold a support hearing to establish a support order for payment of involuntary placement costs. (5-8-09)

**~~§~~238. -- ~~§~~239. (RESERVED)**

**~~§~~240. INSURANCE COVERAGE.**

The parent or guardian must inform the Department of all insurance policies covering the child, including names of carriers, and policy or subscriber numbers. If medical, health, and dental insurance coverage is available for the child, the parent must acquire and maintain such insurance. (5-8-09)

**~~§~~241. MEDICAL CARD FOR CHILDREN IN ALTERNATE CARE.**

The Department will issue a medical card to cover medical expenses for each child placed in alternate care. (5-8-09)

**~~§~~242. - ~~§~~243. (RESERVED)**

**~~§~~244. MEDICAL EMERGENCIES.**

In case of serious illness, the alternate care provider must immediately seek medical attention for the child and notify the Department as soon as possible. A parent or guardian, the court in an emergency, or the Department, if it is the guardian of the child, has the authority to consent to major medical care or hospitalization in accordance with Section 39-4504, Idaho Code. (5-8-09)

**~~§~~245. DENTAL CARE.**

Each child age three (3) years or older who is placed in alternate care must receive a dental examination as soon as possible after placement, but not later than ninety (90) days, and thereafter according to a schedule prescribed by the dentist. (5-8-09)

**01. Costs Paid by Medicaid.** If dental care not included in the state medical assistance program is recommended, a request for payment will be submitted to the state Medicaid dental consultant. (5-8-09)

**02. Emergencies.** Emergency dental services will be provided for children in alternate care and paid for by the Department, if there are no other financial resources available. (5-8-09)

**~~§~~246. COSTS OF PRESCRIPTION DRUGS.**

The Department will purchase prescribed drugs, at the Medicaid rate, for a child in alternate care through participating pharmacies. (5-8-09)

**~~§~~247. MEDICAL EXAMINATION UPON ENTERING ALTERNATE CARE.**

Within thirty (30) days of entering alternate care, each child will receive a medical examination to assess the child's health status, and thereafter according to a schedule prescribed by the child's physician or other health care professional. (5-8-09)

**~~§~~248. -- ~~§~~250. (RESERVED)**

**~~§~~251. DRIVERS' TRAINING AND LICENSES FOR CHILDREN IN ALTERNATE CARE.**

Only a parent or guardian of a child in alternate care may authorize drivers' training, provide payment, and sign for drivers' licenses and permits. (5-8-09)

~~5252.~~ -- ~~5282.~~ (RESERVED)

~~5283.~~ PAYMENT TO FAMILY ALTERNATE CARE PROVIDERS.

Monthly payments for care provided by family alternate care providers:

Family Alternate Care Payments - Table <del>5283</del>			
Ages	0-5	6-12	13-18
Monthly Room and Board	<del>\$274</del> <del>329</del>	<del>\$300</del> <del>366</del>	<del>\$431</del> <del>487</del>

~~(5-8-09)~~( )

**01. Gifts.** An additional thirty dollars (\$30) for Christmas gifts and twenty dollars (\$20) for birthday gifts will be paid in the appropriate months. (5-8-09)

**02. Clothing.** Costs for clothing will be paid, based upon the Department's determination of each child's needs. All clothing purchased for a child in alternate care becomes the property of the child. (5-8-09)

**03. School Fees.** School fees due upon enrollment will be paid directly to the school or to the foster parents, based upon the Department's determination of the child's needs. (5-8-09)

~~5284.~~ ADDITIONAL PAYMENTS TO FAMILY ALTERNATE CARE PROVIDERS.

For those children who, as determined by the Department, require additional care above room, board, shelter, daily supervision, school supplies, and personal incidentals, the Department may pay the family alternate care provider an additional amount to that paid under Section ~~5283~~ of these rules. The family alternate care rate is based upon a continuous ongoing assessment of the child's circumstances which necessitate special rates as well as the care provider's ability, activities, and involvement in addressing those special needs. Additional payment will be made as follows:

Additional Family Alternate Care Payments - Table <del>5284</del>		
Lowest Level of Need	Moderate Level of Need	Highest Level of Need
\$90 per month	\$150 per month	\$240 per month

~~(5-8-09)~~( )

**01. Lowest Level of Need.** Ninety dollars (\$90) per month for a child requiring a mild degree of care for documented conditions including: (5-8-09)

- a. Chronic medical problems; (5-8-09)
- b. Frequent, time-consuming transportation needs; (5-8-09)
- c. Behaviors requiring extra supervision and control; and (5-8-09)
- d. Need for preparation for independent living. (5-8-09)

**02. Moderate Level of Need.** One hundred fifty dollars (\$150) per month for a child requiring a moderate degree of care for documented conditions including: (5-8-09)

- a. Ongoing major medical problems; (5-8-09)

- b. Behaviors that require immediate action or control; and (5-8-09)
- c. Alcohol or other substance use disorder. (5-8-09)

**03. Highest Level of Need.** Two hundred forty dollars (\$240) per month for a child requiring an extraordinary degree of care for documented conditions including: (5-8-09)

- a. Serious emotional or behavioral disorder that requires continuous supervision; (5-8-09)
- b. Severe developmental disability; and (5-8-09)
- c. Severe physical disability such as quadriplegia. (5-8-09)

**04. Reportable Income.** Additional payments for more than ten (10) qualified children received during any calendar year must be reported as income to the Internal Revenue Service. (5-8-09)

~~§285.~~ -- 599. (RESERVED)

**600. TREATMENT FOSTER CARE.**

A family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision. Services provided in treatment foster care are at a more intense level than provided in foster care and at a lower level than provided in residential care. Services may include the following: participation in the development and implementation of the child's treatment plan, behavior modification, community supports, crisis intervention, documentation of services and the child's behavior, participation as a member of a multi-disciplinary team, and transportation. Placement into a treatment foster home for children eligible for services under Section ~~4107~~ of these rules is based on the documented needs of the child, the inability of less restrictive settings to meet the child's needs, and the clinical judgment of the Department. (~~3-29-10~~) ( )

**01. Qualifications.** Prior to being considered for designation and reimbursement as a treatment foster parent, each prospective treatment foster parent must accomplish the following: (3-29-10)

- a. Meet all foster family licensure requirements as set forth in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing"; (5-8-09)
- b. Complete Department-approved treatment foster care initial training; and (5-8-09)
- c. Provide a minimum of two (2) references in addition to those provided to be licensed to provide foster care. The additional references must be from individuals who have worked with the prospective treatment foster parent. The additional references must verify that the prospective treatment foster parent has: (3-29-10)
  - i. Training related to, or experience working with, children or youth with mental illness or behavior disorders; and (3-29-10)
  - ii. Demonstrated cooperation and a positive working relationship with families and providers of mental health services. (3-29-10)

**02. Continuing Education.** Following designation as a treatment foster home, each treatment foster home parent must complete fourteen (14) hours of additional training per year as specified in an agreement developed between the treatment foster parents and the Department. (3-29-10)

**03. Availability.** At least one (1) treatment foster parent in each treatment family home must be available twenty-four (24) hours a day, seven (7) days a week to respond to the needs of the foster child. (3-29-10)

**04. Payment.** The Department will pay treatment foster parents up to one thousand eight hundred (\$1,800) dollars per month per child, which includes the monthly payment rate specified in Sections ~~5283~~ and ~~5284~~ of these rules. The payment will be made to treatment foster parents in accordance with a contract with the Department. The purpose of the contract is to make clear that the treatment foster parents must fulfill the

requirements for treatment foster parents under the treatment plan referenced in Subsection 600.06 of this rule.

~~(3-29-10)~~( )

**05. Payment to Contractors.** The Department may also provide treatment foster care through a contract with an agency that is a private provider of treatment foster care. The Department will specify the rate of payment in the contract with the agency. (5-8-09)

**06. Treatment Plan.** The treatment foster parent(s) must implement the portions of the Department-approved treatment plan for which they are designated as responsible for each child in their care. This plan is incorporated as part of the treatment plan identified in Section ~~1015~~ of these rules. ~~(3-29-10)~~( )

**601. -- 699. (RESERVED)**

**700. RESIDENTIAL CARE FACILITIES.**

Residential care facilities provide a more intensive setting than treatment foster care. Residential care facilities in Idaho are licensed under IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing" to provide residential care for children and staffed by employees who cover assigned shifts. Children placed in residential care facilities receive services that may include the following: assessment, supervision, treatment plan development and implementation, documentation, behaviorally focused skill building, service coordination or clinical case management, consultation, psychotherapy, psychiatric care, and twenty-four (24) hour crisis intervention. Placement into a residential care facility for children eligible for services under Section ~~4107~~ of these rules is based on the documented needs of the child and the inability of less restrictive settings to meet the child's needs. ~~(5-8-09)~~( )

**01. Prior Authorization.** Prior authorization must be obtained from an authorized representative in the Department's Division of Behavioral Health for placement of a child in a residential care facility where the Division of Behavioral Health is making full or partial payment. (5-8-09)

**02. Payment.** When care is purchased from private providers, payment will be made in accordance with a contract authorized by the Department, based on the needs of each child being placed and the services to be provided. (5-8-09)

**701. -- 799. (RESERVED)**

**800. SIX-MONTH REVIEWS FOR CHILDREN IN ALTERNATE CARE PLACEMENTS.**

~~When a judicial~~ A review ~~does not~~ is to occur at the end of a six (6) month period for any child in an alternate care placement. ~~The Department will conduct a case review to assure compliance with all applicable state and federal laws, and to ensure the treatment plan focuses on the goals of safety, permanency, effectiveness of treatment, and well-being of the child. The Department may request the court hold a review hearing for the child in accordance with Section 16-2407(3), Idaho Code.~~ ~~(5-8-09)~~( )

**01. Notice of Six-Month Review.** The parent or guardian, foster parent of a child, ~~or~~ relative providing care for the child ~~or any preadoptive parent are~~ is to be provided with notice of their right to be heard in the six-month review. In the case of an Indian child, the child's tribe and any Indian custodian must also be provided with notice. This must not be construed to require that any foster parent, ~~preadoptive parent,~~ or relative providing care for the child be made a party to the review solely on the basis of the receipt of such notice. Participants have the right to be represented by the individual of their choice. ~~(5-8-09)~~( )

**02. Procedure in the Six-Month Review.** The parties who received notice will be given the opportunity to participate in the case review. (5-8-09)

**03. Members of Six-Month Review Panel.** The six-month review panel must include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parent or guardian. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes, and citizens qualified by experience, professional background, or training. Members of the panel will be chosen by and receive instructions from an authorized representative in the Department's Division of Behavioral Health, to enable them to understand the review process and their roles as participants. (5-8-09)

**04. Considerations in Six-Month Review.** Whether conducted by the court in a review hearing or a Department review panel, under state law, federal law and regulation, each of the following must be addressed in a six-month review: (5-8-09)

- a.** Determine the extent of compliance with the treatment plan; (5-8-09)
- b.** Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; (5-8-09)
- c.** Review compliance with the Indian Child Welfare Act, when applicable; (5-8-09)
- d.** Determine the safety of the child, the continuing need for and appropriateness of the child's placement; and (5-8-09)
- e.** Project a date by which the child may be returned and safely maintained at home or placed for adoption, guardianship, or other permanent placement. (5-8-09)

**05. Recommendations and Conclusions of Six-Month Review Panel.** Following the six-month review, written conclusions and recommendations will be provided to all participants, subject to Department safeguards for confidentiality. The document containing the written conclusions and recommendations must also include appeal rights. (5-8-09)

**~~801. PERMANENCY HEARINGS FOR CHILDREN IN ALTERNATE CARE PLACEMENTS.~~**

~~Under Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must have a permanency hearing conducted by the court or a court designee. Permanency hearings must be held no later than twelve (12) months after the date of the child's placement in alternate care and no later than every twelve (12) months thereafter while the child remains in alternate care. A twelve (12) month permanency hearing will be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department.~~ (5-8-09)

~~**01. Department Request for Permanency Hearing.** The Department may request the court hold a permanency hearing for a child in accordance with Section 16-2407(3), Idaho Code.~~ (5-8-09)

~~**02. Attendance at Permanency Hearings.** The permanency hearing includes, at a minimum, the child's parent or guardian, foster parent of a child, and any preadoptive parent or relative providing care for the child. In the case of an Indian child, the child's tribe and Indian custodian (if there is one), must also be included in the permanency hearing. Parties will be provided, by the court, with written notice of the hearing and of their right to be heard. This is not to be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis of the receipt of such notice.~~ (5-8-09)

~~**03. Judicial Determinations.**~~ (5-8-09)

~~**a.** The court, or an officer designated by the court, will determine if the Department has made reasonable efforts to finalize a permanency plan for the child and issue an order specifying the permanency plan.~~ (5-8-09)

~~**b.** In cases where the Department has documented, in the alternate care plan component of the treatment plan, compelling reasons for not terminating the parent and child relationship, the court reviews and determines if the compelling reasons exist.~~ (5-8-09)

**8021. -- 999. (RESERVED)**

**IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY**  
**19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY**  
**DOCKET NO. 19-0101-1601**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912, Idaho Code.

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

This rulemaking clarifies certain requirements for licensees, sets standards for patient records, emergency drugs, and infection control practices, and clarifies requirements for renewal of licenses and permits and requires continuing education on the prescription monitoring program. Changes are being made to these pending rules to delete unnecessary wording proposed in Rule 041.03; and deleting the proposed amendment to require attestation of completed continuing education. The requirement for documenting continuing education will remain.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2016 Idaho Administrative Bulletin, [Vol. 16-9, pages 159-177](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Susan Miller, Executive Director, at (208) 334-2369 or at [susan.miller@isbd.idaho.gov](mailto:susan.miller@isbd.idaho.gov).

DATED 4th day of November, 2016.

Susan Miller  
Executive Director  
Idaho Board of Dentistry  
350 N. 9th St., Ste. M100  
P.O. Box 83720  
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**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 54-912, Idaho Code.

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

This rulemaking will accomplish the following: Eliminate an incorporated document related to standards for patient records and instead include specific requirements in rule; clarify applicability of timeframe for acceptance of licensure examinations; clarify requirements for renewal of an active license; authorize a dental hygienist to administer nitrous oxide under general supervision; revise the unprofessional conduct rules regarding controlled substances to include any prescription drug; eliminate advertising rules and instead include in unprofessional conduct rules; add rule regarding minimum infection control and sterilization requirements; eliminate continuing education documentation requirement and require instead an attestation of completion; add rule requiring basic emergency drugs; clarify requirements for sedation permit renewal and reinstatement of an expired permit; and require dentists to obtain one hour of continuing education related to the prescription monitoring program. In addition to the listed issues, housekeeping and/or technical corrections have been identified for inclusion in the rulemaking.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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(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, page 47](#).

**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

The rulemaking does eliminate an incorporated document related to standards for patient records - The American Association of Dental Boards, the Dental Patient Record, June 12, 2009 – and instead includes specific requirements in Section 041 of the rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, at (208) 334-2369 or at [susan.miller@isbd.idaho.gov](mailto:susan.miller@isbd.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 September 28, 2016.

DATED this 27th Day of July, 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 DOCKET NO. 19-0101-1601**

**004. INCORPORATION BY REFERENCE (RULE 4).**

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

**01. Professional Standards. (3-29-12)**

**a.** American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 8th Edition, 2012. (3-20-14)

**b.** American Dental Association, Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, October 2007. (4-7-11)

**c.** American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)

**d.** American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)

**e.** Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

**f.** American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2009. (4-7-11)

**g.** American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), June 2009. (4-7-11)

**h.** American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. (4-7-11)

~~**i.** *American Association of Dental Boards, the Dental Patient Record, June 12, 2009.* (4-7-11)~~

**02. Availability.** These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. EXAMINATIONS (RULE 10).**

Examinations may be completed solely by the Board or, at its discretion, the Board may participate in and accept an examining agent. Examination results will be valid for Idaho licensure by examination for a period of five (5) years from the date of successful completion of the examination. ~~(3-18-99)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**014. EXAMINATION FOR GENERAL DENTAL LICENSES (RULE 14).**

Pursuant to Section 54-918, Idaho Code, the Board shall conduct both written and clinical examinations of such duration and character and upon such subjects in dentistry as the Board shall determine to thoroughly test the fitness and ability of the applicant to practice dentistry in the state of Idaho. The Board may accept as meeting this requirement successful completion of an examination administered by the Board or its agent, and completion of supplementary examinations as the Board deems necessary to determine the competency of the applicant for licensure. Any exam conducted by the Board may include: (7-1-93)

**01. Written Examination.** Evidence of passing the National Board examination may be required of all candidates applying for a license to practice dentistry. Any other written examination will be specified by the Board. (7-1-93)

**02. Clinical Examination.** All applicants for license to practice general dentistry shall be required to pass a Board-approved clinical examination, which includes a periodontal examination. ~~(3-20-14)~~( )

**015. EXAMINATION FOR DENTAL HYGIENE LICENSES (RULE 15).**

Pursuant to Section 54-918, Idaho Code, the Board shall conduct both written and clinical examinations, which shall be of such duration and character and upon such subjects in dental hygiene as the Board shall determine to thoroughly test the fitness and ability of the applicants to practice dental hygiene in the state of Idaho. The Board may accept as meeting this requirement successful completion of an examination administered by the Board or its agent, and completion of supplementary examinations as the Board deems necessary to determine the competency of the applicant for licensure. Any examination conducted by the Board may include: (7-1-93)

**01. Written Examination.** Evidence of passing the National Board examination may be required of all candidates applying for a dental hygiene license. Any other written examination will be specified by the Board. (7-1-93)

**02. Clinical Examination.** All applicants for license to practice dental hygiene shall be required to pass a Board-approved clinical dental hygiene examination ~~including~~ and a clinical local anesthesia examination. ~~(3-20-14)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**018. REQUIREMENT FOR CPR (RULE 18).**

Applicants for initial ~~or renewal~~ licensure as a dentist, dental specialist, or dental hygienist shall provide written verification of current cardiopulmonary resuscitation (CPR) certification as a requirement for licensure. All practicing dentists, dental specialists, or dental hygienists must maintain current CPR certification. ~~(4-2-03)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. DENTAL HYGIENISTS - PRACTICE (RULE 30).**

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, dental hygienists are hereby authorized to perform the activities specified below: (4-6-05)

**01. General Supervision.** A dental hygienist may perform specified duties under general supervision as follows: (4-6-05)

**a.** Oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus); (3-20-14)

**b.** Medical history assessments and intra-oral and extra-oral assessments (including charting of the oral cavity and surrounding structures, taking case histories and periodontal assessment); (4-11-06)

- c. Developing patient care plans for prophylaxis, non-surgical periodontal therapy and supportive and evaluative care in accordance with the treatment parameters set by supervising dentist; (4-11-06)
- d. Root planing; (4-11-06)
- e. Non-surgical periodontal therapy; (4-11-06)
- f. Closed subgingival curettage; (4-11-06)
- g. Administration of local anesthesia; (4-6-05)
- h. Removal of marginal overhangs (use of high speed handpieces or surgical instruments is prohibited); (4-6-05)
- i. Application of topical antibiotics or antimicrobials (used in non-surgical periodontal therapy); (4-6-05)
- j. Provide patient education and instruction in oral health education and preventive techniques; (3-20-14)
- k. Placement of antibiotic treated materials pursuant to dentist authorization; ~~and~~ (3-20-14) ( )
- ~~l.~~ Administration and monitoring of nitrous oxide/oxygen; and ( )
- ~~l.m.~~ All duties which may be performed by a dental assistant. (3-20-14)
- 02. **Indirect Supervision.** A dental hygienist may perform specified duties under indirect supervision as follows: (4-6-05)
- ~~a.~~ Administration and monitoring of nitrous oxide/oxygen; (4-7-11)
- ~~b.a.~~ All dental hygienist duties specified under general supervision; and (4-6-05)
- ~~b.b.~~ Such other duties as approved by the Board. (4-11-06)
- 03. **Direct Supervision.** A dental hygienist may perform specified duties under direct supervision as follows: (4-6-05)
- a. Use of a laser restricted to gingival curettage and bleaching; (4-6-05)
- b. All dental hygienist duties specified under general and indirect supervision; and (4-6-05)
- c. Such other duties as approved by the Board. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**035. DENTAL ASSISTANTS - PRACTICE (RULE 35).**

- 01. **Direct Supervision.** A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)
- a. Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)
- b. Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)

- c. Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)
  - d. Expose and process radiographs; (4-6-05)
  - e. Make impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (3-20-14)
  - f. Record diagnostic bite registration; (4-6-05)
  - g. Record bite registration for fabrication of restorations; (4-6-05)
  - h. Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)
  - i. Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)
  - j. Placement and removal of arch wire; (4-6-05)
  - k. Placement and removal of orthodontic separators; (4-6-05)
  - l. Placement and removal of ligature ties; (4-6-05)
  - m. Cutting arch wires; (4-6-05)
  - n. Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)
  - o. Adjust arch wires; (4-6-05)
  - p. Etching of teeth prior to placement of restorative materials; (4-6-05)
  - q. Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)
  - r. Placement and removal of rubber dam; (4-6-05)
  - s. Placement and removal of matrices; (4-6-05)
  - t. Placement and removal of periodontal pack; (4-6-05)
  - u. Removal of sutures; (4-6-05)
  - v. Application of cavity liners and bases; (4-6-05)
  - w. Placement and removal of gingival retraction cord; and (3-20-14)
  - x. Application of topical fluoride agents. (3-20-14)
- 02. **Prohibited Duties.** Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)
  - a. Definitive diagnosis and treatment planning. (4-6-05)
  - b. The intraoral placement or carving of permanent restorative materials. (3-20-14)
  - c. Any irreversible procedure using lasers. (3-20-14)

- d. The administration of any general or local injectable anesthetic. (3-20-14)
- e. Any oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus). (3-20-14)
- f. Use of an air polisher. (3-20-14)
- g. Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (4-6-05)
- h. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)
  - i. Fabrication and placement of temporary crowns; (4-6-05)
  - ii. Perform the mechanical polishing of restorations; (7-1-93)
  - iii. Initiating, regulating and monitoring the administration of nitrous oxide/oxygen to a patient; (4-7-11)
  - iv. Application of pit and fissure sealants; (7-1-93)
  - v. Coronal polishing (removal of plaque biofilm and stains from the teeth using an abrasive agent with a rubber cup or brush). (3-20-14)
  - vi. Use of a high-speed handpiece only for the removal of orthodontic cement or resin. (3-20-14)

**03. Expanded Functions Qualifications.** A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.g.h. upon satisfactory completion of the following requirements: ~~(4-6-05)~~ ( )

- a. Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (4-6-05)
  - i. Current certification by the Dental Assisting National Board; or (7-1-93)
  - ii. Successful completion of Board-approved curriculum in the fundamentals of dental assisting; or (3-29-12)
  - iii. Successfully challenging the fundamentals course. (7-1-93)
- b. Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

**04. Curriculum Approval.** Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its course curriculum ~~in expanded functions~~. Before approving such curriculum, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. ~~(3-29-12)~~ ( )

**05. Other Credentials.** Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved curriculum, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may

consider the assistant qualified to perform any expanded function(s).

(3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. UNPROFESSIONAL CONDUCT (RULE 40).**

A dentist or dental hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (3-20-14)

**01. Fraud.** Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

**02. Unlicensed Practice.** Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)

**03. Unlawful Practice.** Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)

**04. Dividing Fees.** A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)

**a.** The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)

**b.** The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)

**05. ~~Controlled Substances~~ Prescription Drugs.** Prescribing or administering ~~controlled substances~~ **prescription drugs** not reasonably necessary for, or within the scope of, providing dental services for a patient. In prescribing or administering ~~controlled substances~~ **prescription drugs**, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases. A dentist may not prescribe ~~controlled substances~~ **prescription drugs** for or administer controlled substances to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing ~~controlled substances~~ **prescription drugs**. (3-18-99)( )

**06. Harassment.** The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)

**07. Discipline in Other States.** Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)

**08. Altering Records.** Alter a patient's record with intent to deceive. (7-1-93)

**09. Office Conditions.** Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (7-1-93)

**10. Abandonment of Patients.** Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)

- 11. Use of Intoxicants.** Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)
- 12. Mental or Physical Illness.** Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)

  - a.** Mental illness; (7-1-93)
  - b.** Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)
- 13. Consent.** Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)
- 14. Scope of Practice.** Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)
- 15. Delegating Duties.** Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)
- 16. Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)
- 17. Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)
- 18. Legal Compliance.** Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry or dental hygiene. (3-29-12)
- 19. Exploiting Patients.** Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)
- 20. Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)
- 21. Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)
- 22. Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)
- 23. Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)
- 24. Compliance With Dentist Professional Standards.** Failure by a dentist to comply with professional standards applicable to the practice of dentistry, as incorporated by reference in this chapter. (3-29-12)
- 25. Compliance With Dental Hygienist Professional Standards.** Failure by a dental hygienist to comply with professional standards applicable to the practice of dental hygiene, as incorporated by reference in this chapter. (3-29-12)
- 26. Failure to Provide Records to a Patient or Patient's Legal Guardian.** Refusal or failure to

provide a patient or patient's legal guardian legible copies of dental records. Failure to provide a patient or patient's legal guardian with records under Subsection 040.26 within five (5) business days shall be considered unprofessional conduct. A patient or patient's legal guardian may not be denied a copy of his records for any reason, regardless of whether the person has paid for the dental services rendered. A person may be charged for the actual cost of providing the records but in no circumstances may a person be charged an additional processing or handling fee or any charge in addition to the actual cost. (3-20-14)

**27. Failure to Cooperate With Authorities.** Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, willful failure to provide information upon request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. (3-20-14)

**28. Advertising.** Advertise in a way that is false, deceptive, misleading or not readily subject to verification. ( )

**041. PATIENT RECORDS (RULE 41).**

**01. Individual Records.** Each licensee shall have prepared and maintained an accurate record for each person receiving dental services, regardless of whether any fee is charged. The record shall contain the name of the licensee rendering the service and include: ( )

**a.** Name and address of patient and, if a minor, name of guardian; ( )

**b.** Date and description of examination and diagnosis; ( )

**c.** An entry that informed consent has been obtained and the date the informed consent was obtained. Documentation may be in the form of an acronym such as "PARQ" (Procedure, Alternatives, Risks and Questions) or "SOAP" (Subjective Objective Assessment Plan) or their equivalent. ( )

**d.** Date and description of treatment or services rendered; ( )

**e.** Date and description of treatment complications; ( )

**f.** Date and description of all radiographs, study models, and periodontal charting; ( )

**g.** Health history; and ( )

**h.** Date, name of, quantity of, and strength of all drugs dispensed, administered, or prescribed. ( )

**02. Charges and Payments.** Each dentist shall have prepared and maintained an accurate record of all charges and payments for services including source of payments. ( )

**03. Record Retention.** Each dentist shall maintain patient records as long as practicable, but in no event less than seven (7) years from the date of last entry unless: ( )

**a.** The patient requests the records be transferred to another dentist who shall maintain the records. ( )

**b.** The dentist gives the records to the patient; or ( )

**c.** The dentist transfers the dentist's practice to another dentist who shall maintain the records. ( )

**042. INFECTION CONTROL (RULE 42).**

In determining what constitutes unacceptable patient care with respect to infection control, the Board may consider current infection control guidelines such as those of the Centers for Disease Control and Prevention and the American Dental Association. Additionally, licensees must comply with the following requirements: ( )



**01. Gloves.** Disposable gloves shall be worn whenever placing fingers into the mouth of a patient or when handling blood or saliva contaminated instruments or equipment. Appropriate hand hygiene shall be performed prior to gloving. ( )

**02. Masks and Eyewear.** Masks and protective eyewear or chin-length shields shall be worn by licensees and other dental care workers when spattering of blood or other body fluids is likely. ( )

**03. Instrument Sterilization.** Between each patient use, instruments or other equipment that come in contact with body fluids shall be sterilized. ( )

**04. Sterilizing Devices Testing.** Heat sterilizing devices shall be tested for proper function by means of a biological monitoring system that indicates micro-organisms kill each calendar week in which scheduled patients are treated. Testing results shall be retained by the licensee for the current calendar year and the two (2) preceding calendar years. ( )

**05. Non-Critical Surfaces.** Environmental surfaces that are contaminated by blood or saliva shall be disinfected with an EPA registered hospital disinfectant. ( )

**06. Clinical Contact Surfaces.** Impervious backed paper, aluminum foil, or plastic wrap should be used to cover surfaces that may be contaminated by blood or saliva. The cover shall be replaced between patients. If barriers are not used, surfaces shall be cleaned and disinfected between patients by using an EPA registered hospital disinfectant. ( )

**07. Disposal.** All contaminated wastes and sharps shall be disposed of according to any governmental requirements. ( )

044.3. -- 044. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

**046. SPECIALTY ADVERTISING (RULE 46).**

~~Dentists and dental hygienists licensed to practice in Idaho may advertise in any medium or by other form of public communication so long as any such advertising is not false, deceptive, misleading or not readily subject to verification. A violation of this advertising rule shall constitute and be considered as unprofessional conduct pursuant to the Idaho Dental Practice Act and this chapter. (3-20-14)~~

**~~01. General Advertising Provisions.~~** (3-20-04)

~~a. "Advertisement" shall mean any public communication, made in any form or manner whatsoever, about a licensee's professional services, fees or qualifications for the purpose of soliciting business. A licensee who engages or authorizes another person or entity to advertise for or on the licensee's behalf is responsible for the content of the advertisement unless the licensee can prove that the content of the advertisement was contrary to the licensee's specific directions. (3-20-14)~~

~~b. If the form or manner of advertising consists of or contains verbal communication to the public by television, radio, or other means, the advertisement shall be prerecorded and approved for broadcast by the licensee and a recording of the actual advertisement shall be retained by the licensee for a period of two (2) years. Upon receipt of a written request from the Board, a licensee shall provide any such recorded advertisement to the Board within five (5) working days. (3-20-04)~~

~~c. Any advertisement made under or by means of a fictitious or assumed business name shall be the responsibility of all licensees who are owners, members, partners or proprietors of the business entity. (3-20-14)~~

**~~02. Prohibited Advertising.~~** A licensee shall not advertise in any form or manner which is false, misleading or deceptive to the public or which is not readily susceptible to verification. False, misleading or

~~deceptive advertising or advertising that is not readily susceptible to verification includes, but is not limited to, advertising that:~~ (3-20-04)

- ~~a. Makes a material misrepresentation of fact or omits a material fact;~~ (3-20-04)
- ~~b. Makes a representation that is false as to the credentials, education, or the licensing status of any licensee;~~ (3-20-14)
- ~~c. Represents that the benefits of a dental insurance plan will be accepted as full payment when deductibles or copayments are required;~~ (3-20-04)

~~03. Specialty Advertising.~~ The Board recognizes and licenses the following specialty areas of dental practice: Dental Public Health; Endodontics; Oral and Maxillofacial Pathology; Oral and Maxillofacial Radiology; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics. The specialty advertising rules are intended to allow the public to be informed about recognized dental specialties and specialization competencies of licensees and to require appropriate disclosures to avoid misperceptions on the part of the public. (4-6-05)( )

~~01. Recognized Specialty License.~~ An advertisement shall not state that a licensee is a specialist, or specializes in a recognized specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice unless the licensee has been issued a license in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as "Endodontist," "Pedodontist," "Pediatric Dentist," "Periodontist," "Prosthodontist," "Orthodontist," "Oral and Maxillofacial Pathologist," "Oral Pathologist," "Oral and Maxillofacial Radiologist," "Oral Radiologist," "Oral and Maxillofacial Surgeon," "Oral Surgeon," "Specialist," "Board Certified," "Diplomate," "Practice Limited To," and "Limited To Specialty Of" shall be prima facie evidence that the licensee is holding himself out to the public as a licensed specialist in a specialty area of dental practice. (3-20-14)( )

~~02. Disclaimer.~~ A licensee who has not been licensed by the Board in a recognized specialty area of dental practice may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the licensee is "licensed as a general dentist" or that the specialty services "will be provided by a general dentist." Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-14)( )

~~03. Unrecognized Specialty.~~ A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-14)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. CONTINUING EDUCATION FOR DENTISTS (RULE 50).**

~~Effective October 1994,~~ Renewal of any active dental license will require evidence of completion of continuing education or volunteer dental practice that meets the following requirements: (4-6-05)( )

- ~~01. Requirements:~~ (3-18-99)
- ~~a. All active dentists must hold a current CPR card.~~ (7-1-93)

~~01. Number of Credits.~~ All active dentists shall acquire thirty (30) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. One (1) of the credits must be related to use of the Idaho Prescription Monitoring Program (PMP). (3-29-12)( )

~~02. Nature of Education.~~ Continuing education must be oral health/health-related for the professional development of a dentist. (3-20-14)( )

**~~03.~~ Volunteer Practice.** A dentist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)( )

**~~04.~~ Prorated Credits.** Any person who becomes licensed as an active dentist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)( )

**~~05.~~ Documentation.** In conjunction with license renewal, the dentist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)

**051. CONTINUING EDUCATION FOR DENTAL HYGIENISTS (RULE 51).**

~~Effective April 1994, \*~~Renewal of any active dental hygiene license or dental hygiene license endorsement will require evidence of completion of continuing education or volunteer dental hygiene practice that meets the following requirements. (4-6-05)( )

**01. Requirements for Renewal of an Active Status Dental Hygiene License:** (4-6-05)

~~a. All active dental hygienists must hold a current CPR card.~~ (6-2-92)

**~~a.~~** All active dental hygienists shall acquire twenty-four (24) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. (3-29-12)

**~~b.~~** Continuing education must be oral health/health-related education for the professional development of a dental hygienist. (3-20-14)

**~~c.~~** A dental hygienist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental hygiene practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)

**~~d.~~** Any person who becomes licensed as an active dental hygienist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)

**02. Requirements for Renewal of an Extended Access Dental Hygiene License Endorsement.** In addition to any other continuing education requirements for renewal of a dental hygiene license, a person granted an extended access dental hygiene license endorsement shall complete four (4) credits of verifiable continuing education in each biennial renewal period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children. Any person who is issued an extended access dental hygiene license endorsement during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of those continuing education credits required under this section as specified by the Board. (3-20-14)

**03. Documentation.** In conjunction with license and endorsement renewal, the dental hygienist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental hygiene practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**055. MINIMAL SEDATION (RULE 55).**

Persons licensed to practice dentistry in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer minimal sedation to patients of sixteen (16) years of age or older. ~~In cases where the patient weighs less than one hundred (100) pounds, or is under the age of sixteen (16) years, minimal~~

~~sedation may be administered without a permit by use of nitrous oxide, or with a single enteral dose of a sedative agent administered in the dental office.~~ When the intent is minimal sedation, the appropriate initial dosing of a single enteral drug is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. In cases where the patient weighs less than one hundred (100) pounds, or is under the age of sixteen (16) years, minimal sedation may be administered without a permit by use of nitrous oxide, or with a single enteral dose of a sedative agent administered in the dental office. (3-20-14)( )

**01. Patient Safety.** The administration of minimal sedation is permissible so long as it does not produce an alteration of the state of consciousness in a patient to the level of moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of moderate sedation, deep sedation or general anesthesia. Nitrous oxide/oxygen may be used in combination with a single enteral drug in minimal sedation, except as described in Section 055 of these rules. Notwithstanding any other provision in these rules, a dentist shall initiate and regulate the administration of nitrous oxide/oxygen when used in combination with minimal sedation. (3-20-14)

**02. Personnel.** At least one (1) additional person currently certified in Basic Life Support for Healthcare Providers must be present in addition to the dentist. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**058. EMERGENCY MEDICATIONS OR DRUGS (RULE 58).**

**01. Emergency Medications Or Drugs.** The following emergency medications or drugs are required in all sites where anesthetic agents of any kind are administered: ( )

- a. Anti-anaphylactic agent:** ( )
- b. Antihistaminic:** ( )
- c. Aspirin:** ( )
- d. Bronchodilator:** ( )
- e. Coronary artery vasodilator; and** ( )
- f. Glucose.** ( )

~~058.~~ **059. (RESERVED)**

**060. MODERATE SEDATION (RULE 60).**

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under sixteen (16) years of age and one hundred (100) pounds unless they have qualified for and been issued a moderate parenteral sedation permit. (3-29-12)

**01. Requirements for a Moderate Enteral Sedation Permit.** To qualify for a moderate enteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 in these rules. The five (5) year requirement regarding the required training for a moderate enteral sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. To obtain a moderate enteral sedation permit, a

dentist must provide verification of the following: (4-11-15)

a. Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; and (4-7-11)

b. Current certification in Advanced Cardiac Life Support. (4-11-15)

**02. Requirements for a Moderate Parenteral Sedation Permit.** To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a moderate parenteral sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The training program shall: (4-7-11)

a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and (4-5-00)

b. Consist of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route; and (4-7-11)

c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received. (3-18-99)

d. In addition, the dentist must maintain current certification in Advanced Cardiac Life Support or Pediatric Advanced Life Support, whichever is appropriate for the patient being sedated. ~~(4-11-15)~~ ( )

**03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits.** The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004.01.c. and Section 004.01.d. of these rules as set forth by the American Dental Association. (4-11-15)

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: (4-11-15)

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; (4-11-15)

ii. An operating table or chair that permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; (4-11-15)

iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; (4-11-15)

- iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure; (4-11-15)
- v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; (4-11-15)
- vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; (4-11-15)
- vii. A sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, and automated external defibrillator (AED); and (4-11-15)
- viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, bronchodilators, and antihistamines. (4-11-15)
- ix. Additional emergency equipment and drugs required for moderate parenteral sedation permits include precordial/pretracheal stethoscope or end-tidal carbon dioxide monitor, intravenous fluid administration equipment, vasopressors, and anticonvulsants. (4-11-15) ( )
- b. Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)
  - i. The operator; and (10-1-87)
  - ii. An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)
  - iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The dentist and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (4-11-15)
- c. Pre-sedation Requirements. Before inducing moderate sedation, a dentist shall: (4-11-15)
  - i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for moderate sedation; (4-11-15)
  - ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; (4-11-15)
  - iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and (4-11-15)
  - iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. (4-11-15)
- d. Patient Monitoring. Patients shall be monitored as follows: (4-11-15)
  - i. Patients must ~~have~~ be continuously ~~monitoring~~ monitored using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under moderate sedation shall be continuously monitored; (4-11-15) ( )



ii. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from moderate sedation; (4-11-15)

iii. A dentist shall not release a patient who has undergone moderate sedation except to the care of a responsible third party; (4-11-15)

iv. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and (4-11-15)

v. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. (4-11-15)

e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. (4-11-15)

f. Permit Renewal. Before the expiration date of a permit, the Board will, as a courtesy, mail notice for renewal of permit to the last mailing address on file in the Board's records. The licensee must return the completed renewal application along with the current renewal fees prior to the expiration of said permit. Failure to submit a renewal application and permit fee shall result in expiration of the permit and termination of the licensee's right to administer moderate sedation. Failure to submit a complete renewal application and permit fee within thirty (30) days of expiration of the permit shall result in cancellation of the permit. A licensee whose permit is canceled due to failure to renew within the prescribed time is subject to the provisions of Paragraph 060.03.g. of these rules. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. In addition to the continuing education hours, a dentist must: ~~(3-20-14)~~( )

i. For a moderate enteral sedation permit, maintain current certification in basic life support for healthcare providers or advanced cardiac life support; (4-11-15)

ii. For a moderate parenteral sedation permit, maintain current certification in advanced cardiac life support. (3-20-14)

g. Reinstatement. A dentist may make application for the reinstatement of ~~an expired~~ a canceled or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's ~~expiration~~ cancellation or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in moderate sedation for each year subsequent to the date upon which the permit ~~expired~~ was canceled or ~~was~~ surrendered. A fee for reinstatement shall be assessed to cover administrative costs. ~~(4-7-11)~~( )

#### **061. GENERAL ANESTHESIA AND DEEP SEDATION (RULE 61).**

Dentists licensed in the state of Idaho cannot use general anesthesia or deep sedation in the practice of dentistry unless they have obtained the proper permit from the Idaho State Board of Dentistry by conforming with the following conditions: (4-7-11)

**01. Requirements for a General Anesthesia and Deep Sedation Permit.** A dentist applying for a permit to administer general anesthesia or deep sedation shall provide proof that the dentist: (4-11-15)

a. Has completed an advanced education program accredited by the ADA Commission on Dental Accreditation that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia, commensurate with Part IV.C of the American Dental Association's "Guidelines for the Use of Sedation and General Anesthesia by Dentists" within the five (5) year period immediately prior to the date of application for a permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application; and (4-7-11)

b. Current Certification in Advanced Cardiac Life Support; ~~and~~ or Pediatric Advanced Life Support, whichever is appropriate for the patient being sedated. (4-11-15)( )

~~e. Has an established protocol or admission to a recognized hospital.~~ (3-18-99)

**02. General Requirements for General Anesthesia and Deep Sedation Permits.** The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of general anesthesia or deep sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004 of these rules, as set forth by the American Association of Oral and Maxillofacial Surgeons in their office anesthesia evaluation manual. (4-11-15)

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: (4-11-15)

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; (4-11-15)

ii. An operating table or chair that permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; (4-11-15)

iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; (4-11-15)

iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device that will function in the event of a general power failure; (4-11-15)

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; (4-11-15)

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; (4-11-15)

vii. A sphygmomanometer, precordial/pretracheal stethoscope, end-tidal carbon dioxide monitor, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, intravenous fluid administration equipment, and automated external defibrillator (AED); and (4-11-15)

viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, vasopressors, bronchodilators, antihistamines, and anticonvulsants. (4-11-15)

b. Personnel. For general anesthesia or deep sedation, the minimum number of personnel shall be three (3) including: (4-7-11)

i. A qualified operator to direct the sedation; and (4-11-15)

ii. Two (2) additional individuals who have current certification in Basic Life Support for the Healthcare Provider. (4-7-11)

iii. When the same individual administering the deep sedation or general anesthesia is performing the dental procedure, one (1) of the additional appropriately trained team members must be designated for patient monitoring. (4-7-11)



- c. Pre-sedation Requirements. Before inducing general anesthesia or deep sedation, a dentist shall: (4-11-15)
- i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for deep sedation; (4-11-15)
  - ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; (4-11-15)
  - iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and (4-11-15)
  - iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. (4-11-15)
- d. Patient Monitoring. Patients shall be monitored as follows: (4-11-15)
- i. Patients must ~~have be~~ continuously ~~monitoring~~ using pulse oximetry and end-tidal carbon dioxide monitors. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation, and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under deep sedation or general anesthesia shall be continuously monitored; (4-11-15)( )
  - vi. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from general anesthesia and deep sedation; (4-11-15)
  - vii. A dentist shall not release a patient who has undergone general anesthesia, deep sedation or moderate sedation except to the care of a responsible third party; (4-11-15)
  - viii. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and (4-11-15)
  - ix. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. (4-11-15)
- e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. (4-11-15)

**03. Moderate Sedation.** A dentist holding a permit to administer general anesthesia or deep sedation under this rule may also administer moderate sedation. (4-7-11)

**04. Permit Renewal.** Before the expiration date of a permit, the Board will, as a courtesy, mail notice for renewal of permit to the last mailing address on file in the Board's records. The licensee must return the completed renewal application along with the current renewal fees prior to the expiration of said permit. Failure to submit a renewal application and permit fee shall result in expiration of the permit and termination of the licensee's right to administer moderate sedation. Failure to submit a complete renewal application and permit fee within thirty (30) days of expiration of the permit shall result in cancellation of the permit. A licensee whose permit is canceled due to failure to renew within the prescribed time is subject to the provisions of Subsection 061.05 of these rules. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours of continuing education in general anesthesia or deep sedation and proof of current certification in Advanced Life Support will be required to renew a permit. A fee shall be assessed to cover administrative costs. (4-11-15)( )

05. **Reinstatement.** A dentist may make application for the reinstatement of ~~an expired~~ a canceled or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's ~~expiration or cancellation or~~ surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in general anesthesia or deep sedation for each year subsequent to the date upon which the permit ~~expired~~ was canceled or ~~was~~ surrendered. A fee for reinstatement shall be assessed to cover administrative costs. ~~(47H)~~ ( )

## **IDAPA 22 – BOARD OF MEDICINE**

### **22.01.03 – RULES FOR THE LICENSURE OF PHYSICIAN ASSISTANTS**

#### **DOCKET NO. 22-0103-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1806(2), 54-1806(4), (11), 54-1806A, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code.

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

The pending rule was adopted to clarify requirements for volunteer licensure.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 585-594](#).

**FISCAL IMPACT:** This rule change is budget neutral and there is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

DATED this 15th day of November 2016.

Anne K. Lawler, Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive, Suite 140  
P.O. Box 83720  
Boise, Idaho 83720-0058  
Phone (208) 327-7000  
Fax (208) 327-7005

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**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 54-1806(2), 54-1806(4), (11), 54-1806A, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code.

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

<b>Wednesday, November 2, 2016 -- 12:00 - 1:30 pm</b>
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**Idaho State Board of Medicine**  
**1755 Westgate Drive, Suite 140**  
**Boise, ID 83704**

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

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

This rule update clarifies the educational requirements for licensure, clarifies the national certification requirements for licensure and renewal of licensure, adds the ability of a physician assistant to order controlled substances for office use, and other small housekeeping items.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 - This rule change is budget neutral and there is no fiscal impact to the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, a notice of intent to promulgate was not published, and therefore, formal Negotiated Rulemaking was not conducted. However, several meetings were conducted informally with stakeholders, including the state association and their members, other interested parties, and future licensees. Such negotiations shall continue through the comment period and hearing. The Rules draft is available on the Board of Medicine website for review and comment.

**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 Anne K. Lawler, Executive Director, at (208) 327-7000.

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 November 1, 2016. Written comments will also be accepted at the scheduled public hearing.

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 DOCKET NO. 22-0103-1601**

**007. FILING OF DOCUMENTS -- NUMBER OF COPIES.**

All documents in rule-making or contested case proceedings must be filed with the office of the Board. ~~The original and ten (10) copies of all documents must be filed with the office of the Board.~~ (3-15-02)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. Alternate Supervising Physician.** A physician registered with the Board, as set forth in IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians," under an agreement as defined in these rules, who is responsible for supervising the physician assistant or graduate physician assistant in the temporary absence of the supervising physician. The alternate supervising physician shall accept full medical responsibility for the performance, practice, and activities of such licensee being supervised. An alternate supervising physician shall not supervise more than three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize an alternate supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (3-16-04)

**02. Approved Program.** A course of study for the education and training of physician assistants which is accredited by ~~the Committee on Allied Health Education and Accreditation, the Commission on Accreditation of Allied Health Education Programs,~~ the Accreditation Review Commission on Education for Physician Assistants (ARC-PA) or predecessor agency or equivalent agency recognized by the Board as recommended by the Committee. (3-16-04)(      )

**03. Board.** The Idaho State Board of Medicine established pursuant to Section 54-1805, Idaho Code. (3-16-04)

**04. Delegation of Services (DOS) Agreement.** A written document mutually agreed upon and signed and dated by the licensed physician assistant or graduate physician assistant and supervising and alternate supervising physician that defines the working relationship and delegation of duties between the supervising physician and the licensee as specified by Board rule. The Board shall review the written delegation of services agreement and may review job descriptions, policy statements, or other documents that define the responsibilities of the physician assistant or graduate physician assistant in the practice setting, and may require such changes as needed to achieve compliance with these rules, and to safeguard the public. (4-9-09)

**05. Graduate Physician Assistant.** A person who is a graduate of an approved program for the education and training of physician assistants and who meets all the requirements in this chapter for Idaho licensure, but: (3-16-04)

**a.** Has not yet taken and passed the certification examination and who has been authorized by the Board, as defined in Subsection 036.01 of these rules, to render patient services under the direction of a supervising physician for a period of six (6) months; or (3-16-04)

**b.** Has passed the certification examination but who has not yet obtained a college baccalaureate degree and who has been authorized by the Board, as defined in Subsection 036.02 of these rules, to render patient services under the direction of a supervising physician for a period of not more than five (5) years. (3-16-04)

**06. Physician.** A physician who holds a current active license issued by the Board to practice medicine and surgery or osteopathic medicine and surgery in Idaho and is in good standing with no restrictions upon or actions

taken against his license.

(3-16-04)

**07. Physician Assistant.** A person who is a graduate of an approved program and who is qualified by specialized education, training, experience and personal character, as defined in Section 021 of these rules, and who has been licensed by the Board to render patient services under the direction of a supervising and alternate supervising physician. (4-9-09)

**08. Physician Assistant Trainee.** A person who is undergoing training at an approved program as a physician assistant and registered with the Board. (3-16-04)

**09. Supervision.** The direction and oversight of the activities of and patient services provided by a physician assistant or graduate physician assistant by a supervising physician or alternate supervising physician who accepts full medical responsibility with respect thereto. The constant physical presence of the supervising or alternate supervising physician is not required as long as the supervisor and such licensee are or can be easily in contact with one another by radio, telephone, or other telecommunication device. The scope and nature of the supervision shall be outlined in a delegation of services agreement, as defined in Subsection 030.034 of these rules. (4-9-09)( )

**10. Supervising Physician.** A physician registered by the Board, as set forth in IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians," and under an agreement as defined in Subsection 030.034 of these rules, who is responsible for the direction and supervision of the activities of and patient services provided by the physician assistant or graduate physician assistant. The supervising physician accepts full medical responsibility for the activities of and patient services provided by such licensee. A supervising physician shall not supervise more than a total of three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize a supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (3-16-04)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. APPLICATION.**

**01. License Applications.** All applications for licensure as physician assistants and graduate physician assistants shall be made to the Board on forms supplied by the Board and include the nonrefundable application fee. The application form shall be verified and shall require the following: (4-9-09)

**a.** Certificate of graduation from an approved program as defined in Subsection 010.032 and evidence of having received a college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board. (4-9-09)( )

**b.** Proof of current certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board; ( )

**c.** The disclosure of any criminal charges, convictions or guilty pleas against the applicant other than minor traffic offenses; (4-9-09)

**d.** The current mental and physical condition of the applicant, together with disclosure of any previous physical or mental illness which may impact the applicant's ability to render patient services as a physician assistant or graduate physician assistant; (4-9-09)

**e.** The disclosure of any past or pending medical malpractice actions against the applicant, and the judgments or settlements, if any, of such claims exceeding fifty thousand dollars (\$50,000); (4-9-09)

**f.** The disclosure of any disciplinary action by any country or state board of medicine, medical society, professional society, hospital or institution staff; (4-9-09)

**fg.** The disclosure of the refusal to issue or renew a license to render patient services as a physician assistant or graduate physician assistant by any state, Canadian or foreign licensing authority; (4-9-09)

**gh.** References to include one (1) letter of recommendation signed by a licensed physician who have known the applicant professionally for at least one (1) year; (4-9-09)

**hi.** An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than four inches tall by three inches wide (4" x 3"), taken not more than one (1) year prior to the date of the application; (4-9-09)

**ji.** A certified copy of a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded to the Idaho Department of Law Enforcement and to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database; (4-9-09)

**jk.** The employment history and past practice locations of the applicant; (4-9-09)

**li.** Each state or country in which the applicant has applied for a license to practice as physician assistant or graduate physician assistant; (4-9-09)

**lm.** Each state or country wherein the applicant is licensed to practice as physician assistant or graduate physician assistant; and (4-9-09)

**nn.** Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency. (4-9-09)

**02. Reapplication.** If more than two (2) years have elapsed since a licensed physician assistant or graduate physician assistant has actively engaged in practice, reapplication to the Board as a new applicant is required. The Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-16-04)

**03. Application Expiration.** An application for licensure that is not granted or license not issued within one (1) year from the date the application is received by the Board shall expire. However, the applicant may ~~make a written request to the Board to consider his application on an individual basis~~ file an application to the Committee for an extension. In its discretion, the Committee may make a determination if extraordinary circumstances exist that justify extending the one (1) year time period up to an additional one (1) year. The Committee can recommend to the Board to grant the request for such extension of time. The Board shall make all final decisions with respect thereto. (3-16-04)( )

## **021. REQUIREMENTS FOR LICENSURE.**

**01. Residence.** No period of residence in Idaho shall be required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse to issue a license or renew a license if the applicant is not lawfully present in the United States. (4-9-09)

**02. English Language.** Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request only. (4-9-09)

**03. Educational Requirement.** Applicants for licensure shall have completed an approved program as defined in Subsection 010.032 and shall provide evidence of having received a college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board. (3-16-04)( )

~~**04. National Certifying Examination.** Satisfactory completion and passage of the certifying~~



~~examination for physician assistants, administered by the National Commission of Certification of Physician Assistants (NCCPA) or such other examinations, which may be written, oral or practical, as the Board may require.~~  
(4-9-09)

**04. Certification.** Current certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board. ( )

**05. Personal Interview.** The Board may at its discretion, require the applicant or the supervising physician or both to appear for a personal interview. (3-19-99)

**06. Completion of Form.** (3-16-04)

**a.** If the applicant is to practice in Idaho, he must submit payment of the prescribed fee and a completed form provided by the Board indicating: (3-16-04)

**i.** The applicant has completed a delegation of services agreement signed by the applicant, supervising physician and alternate supervising physicians; and (3-16-04)

**ii.** The agreement is on file at each practice location and the address of record of the supervising physician and at the central office of the Board; or (3-16-04)

**b.** If the applicant is not to practice in Idaho, he must submit payment of the prescribed fee and a completed form provided by the Board indicating the applicant is not practicing in Idaho and prior to practicing in Idaho, the applicant will meet the requirements of Subsections 021.046 a.i. and 021.046 a.ii. (3-16-04) ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**028. SCOPE OF PRACTICE.**

**01. Scope.** The scope of practice of physician assistants and graduate physician assistants shall be defined in the delegation of services and may include a broad range of diagnostic, therapeutic and health promotion and disease prevention services. (3-16-04)

**a.** The scope of practice shall include only those duties and responsibilities delegated to the licensee by their supervising and alternate supervising physician and in accordance with the delegation of services agreement and consistent with the expertise and regular scope of practice of the supervising and alternate supervising physician.  
(4-9-09) ( )

**b.** The scope of practice may include prescribing, administering, and dispensing of medical devices and drugs, including the administration of a local anesthetic injected subcutaneously, digital blocks, or the application of topical anesthetics, while working under the supervision of a licensed medical physician. ~~Physician assistants and graduate physician assistants shall not administer or monitor general or regional block anesthesia during diagnostic tests, surgery, or obstetric procedures.~~  
(3-16-04) ( )

**c.** Physician assistants and graduate physician assistants are agents of their supervising and alternate supervising physician in the performance of all practice-related activities and patient services. (3-9-09)

**d.** A supervising physician shall not supervise more than a total of three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize a supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. An alternate supervising physician shall not supervise more than three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize an alternate supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (3-16-04)



~~02. **Practice.** Initiate appropriate laboratory or diagnostic studies, or both, to screen or evaluate the patient's health status and interpret reported information in accordance with knowledge of the laboratory or diagnostic studies, provided such laboratory or diagnostic studies are related to and consistent with the licensee's scope of practice. The scope of practice shall be limited to patient services under the supervision of the supervising or alternate supervising physician. (4-9-09)~~

~~a. Within the education, training and experience of the physician assistant or graduate physician assistant; and (4-9-09)~~

~~b. Consistent with the expertise and regular scope of practice of the supervising and alternate supervising physician. (4-9-09)~~

**029. CONTINUING EDUCATION REQUIREMENTS.**

**01. Continuing Competence.** A physician assistant or graduate physician assistant may be required by the Board at any time to demonstrate continuing competence in the performance of any practice related activity or patient service. (3-16-04)

**02. Requirements for Renewal.** (4-9-09)

~~a. Every other year, and prior to renewal of each license as set forth by the expiration date on the face of the certificate, physician assistants and graduate physician assistants will be required to present evidence of having received one hundred (100) hours of continuing medical education over a two-year period. The courses and credits shall be subject to approval of the Board. (3-16-04)~~

~~b. Every other year, and p~~**P**rior to renewal of each license as set forth by the expiration date on the face of the certificate, physician assistants shall submit verified evidence and/or shall require the original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered directly from the source to the Board of NCCPA certification maintenance and passage of the Physician Assistant National Recertifying Exam (PANRE) <http://www.nccpa.net> attest to maintenance of certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board, which certification requires a minimum of one hundred (100) hours of continuing medical education over a two-year period. (4-9-09) ( )

**030. PRACTICE STANDARDS.**

**01. Identification.** The physician assistant, graduate physician assistant and physician assistant trainee must at all times when on duty wear a placard or plate so identifying himself. (3-16-04)

**02. Advertise.** No physician assistant, graduate physician assistant or physician assistant trainee may advertise or represent himself either directly or indirectly, as a physician. (3-16-04)

**03. Supervising Physician.** Each licensed physician assistant and graduate physician assistant shall have a Board-approved supervising physician prior to practice. ( )

~~034.~~ **Delegation of Services Agreement.** Each licensed physician assistant and graduate physician assistant shall maintain a current copy of a Board-approved Delegation of Services (DOS) Agreement between the licensee and each of his supervising and alternate supervising physicians. The delegation of services agreement, made upon a form provided by the Board, shall include a listing of the licensee's training, experience and education, and defines the patient services to be delegated. It is the responsibility of the licensee and supervising physician to maintain a current delegation of services agreement. All specialized procedures that need prior review and approval by the Board will be listed on the delegation of services agreement form supplied by the Board. Prior to provision, all licensees requesting to provide any of the listed services will be required to send their delegation of services agreement to the Board for approval. The Board may require the supervising physician to provide written information, which will include his affidavit attesting to the licensee's qualifications and clinical abilities to perform the specific procedures listed in the delegation of services agreement. This agreement shall be sent to the Board and must be maintained on file at each practice location and at the address of record of the supervising and alternate

supervising physician. The Committee will review this agreement in conjunction with and make recommendations to the Board. The Board may require such changes as needed to achieve compliance with this chapter and Title 54, Chapter 18, Idaho Code, and to safeguard the public. This agreement shall include: ~~(4-9-09)~~ ( )

- a. Documentation of the licensee's education, training, and experience and a listing of the specific patient services which will be performed by the licensee; (4-9-09)
- b. The specific locations and facilities in which the licensee will function; and (3-16-04)
- c. The written plans and methods to be used to ensure responsible direction and control of the activities and patient services rendered by the licensee which shall provide for: (3-16-04)
  - i. An on-site visit at least monthly; (3-19-99)
  - ii. Regularly scheduled conferences between the supervising physician and the licensee; (3-16-04)
  - iii. Periodic review of a representative sample of records and a periodic review of the patient services being provided by the licensee. This review shall also include an evaluation of adherence to the delegation of services agreement; (3-16-04)
  - iv. Availability of the supervising and alternate supervising physician to the licensee in person or by telephone and procedures for providing backup and supervision in emergency situations; and (4-9-09)
  - v. Procedures for addressing situations outside the scope of practice of the licensee. (3-16-04)
- d. The drug categories or specific legend drugs and controlled drugs, Schedule II through V that will be prescribed provided that the legend drugs and controlled drugs shall be consistent with the regular prescriptive practice of the supervising physician. (3-15-02)

**05. Notification of Change or Addition of Supervising or Alternate Supervising Physician.** A physician assistant or graduate physician assistant must notify the Board when adding, changing, or deleting a supervising physician or alternate supervising physician. Such notification shall include: ( )

- a. The name, business address and telephone number of the new or additional supervising physician(s) or alternate supervising physician(s); ( )
- b. The name, business address, and telephone number of the physician assistant or graduate physician assistant; and ( )
- c. Comply with the requirements of Subsection 030.04. ( )
- d. All supervising physicians and alternate supervising physicians must comply with the requirements of IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians." ( )

**046. On-Site Review.** The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of physician assistants or graduate physician assistants and the locations and facilities in which the licensees practice at such times as the Board deems necessary. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**036. GRADUATE PHYSICIAN ASSISTANT.**

**01. Licensure Prior to Certification Examination -- Board Consideration.** Any person who has graduated from an approved program and meets all Idaho requirements, including achieving a college baccalaureate

degree, but has not yet taken and passed the certification examination, may be considered by the Board for licensure as a graduate physician assistant for six (6) months when: (3-16-04)

a. An application for licensure as a graduate physician assistant has been submitted to the Board on forms supplied by the Board and payment of the prescribed fee. (3-16-04)

b. The applicant shall submit to the Board, within ten (10) business days of receipt, a copy of acknowledgment of sitting for the national certification examination. The applicant shall also submit to the Board, within ten (10) business days of receipt, a copy of the national certification examination results. (4-9-09)

c. After the graduate physician assistant has passed the certification examination, the Board must receive verification of national certification directly from the certifying entity. Once the verification is received by the Board, the graduate physician assistant's license will be converted to a permanent license and he may apply for prescribing authority pursuant to Section 042 of these rules. (3-16-04)

d. The applicant who has failed the certification examination one (1) time, may petition the Board for a one-time extension of his graduate physician assistant license for an additional six (6) months. (3-16-04)

e. If the graduate physician assistant fails to pass the certifying examination on two (2) separate occasions, the graduate physician assistant's license shall automatically be canceled upon receipt of the second failing certification examination score. (3-16-04)

f. The graduate physician assistant applicant shall agree to execute an authorization for the release of information, attached to his application as Exhibit A, authorizing the Board or its designated agents, having information relevant to the application, including but not limited to the status of the certification examination, to release such information, as necessary, to his supervising physician. (3-16-04)

**02. Licensure Prior to College Baccalaureate Degree -- Board Consideration.** Licensure as a graduate physician assistant may also be considered upon application made to the Board on forms supplied by the Board and payment of the prescribed fee when: (3-16-04)

a. All application requirements have been met as set forth in Section 021, except receipt of documentation of a college baccalaureate degree. A college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board shall be completed within five (5) years of initial licensure in Idaho; (3-16-04)

b. A personal interview with the applicant or the supervising physician or both may be required and will be conducted by a designated member of the Board; and (3-16-04)

c. A plan shall be submitted with the application and shall be approved by the Board for the completion of the college baccalaureate degree. (3-16-04)

**03. No Prescribing Authority.** Graduate physician assistants shall not be entitled to issue any written or oral prescriptions ~~and shall be required to have a weekly record review by their supervising physician unless granted an exemption by the Board. Application for an exemption must be in writing and accompany documentation of a minimum of five (5) years of recent practice in another state.~~ (4-9-09)( )

**04. Weekly Record Review.** Graduate physician assistants shall be required to have a weekly record review by their supervising physician, unless subject to an exemption as granted in Subsection 036.03. ( )

**037. DISCIPLINARY PROCEEDINGS AND NOTIFICATION OF CHANGE.**

**01. Discipline.** Every person licensed as a physician assistant or graduate physician assistant is subject to discipline pursuant to the procedures and powers established by and set forth in Section 54-1806A, Idaho Code and the Administrative Procedures Act. (3-16-04)

**02. Grounds for Discipline.** In addition to the grounds for discipline set forth in Section 54-1814, Idaho Code and IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Section 101, persons licensed under these rules are subject to discipline upon the following grounds if that person: (3-16-04)

- a. Held himself out, or permitted another to represent him, to be a licensed physician; (3-16-04)
- b. Had in fact performed otherwise than at the discretion and under the supervision of a physician licensed by and registered with the Board; (3-16-04)
- c. Performed a task or tasks beyond the scope of activities allowed by Section 028; (3-16-04)
- d. Is a habitual or excessive user of intoxicants or drugs; (3-16-04)
- e. Demonstrated manifest incapacity to carry out the functions of a physician assistant or graduate physician assistant; (3-16-04)
- ~~fg.~~ Failed to ~~notify the Board of a change or addition of a supervising or alternate supervising physician within two (2) weeks of the change as specified by Subsection 037.03~~ have a Board-approved supervising physician prior to practice; ~~(3-16-04)~~ ( )
- ~~fg.~~ Failed to complete or maintain a current copy of the Board-approved delegation of services agreement as specified by Section 030; ~~(3-16-04)~~ ( )
- h. Aided or abetted a person not licensed in this state who directly or indirectly performs activities requiring a license; (3-16-04)
- i. Failed to report to the Board any known act or omission of a licensee, applicant, or any other person, which violates any provision of these rules; or (3-16-04)
- j. Interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action. (3-16-04)
- k. Failed to submit to the Board, within ten (10) business days of receipt, a copy of acknowledgment of sitting for the national certification examination, and failed to submit a copy of the national certification examination results within ten (10) business days of receipt. (4-9-09)

**03. Notification of Change or Addition of Supervising or Alternate Supervising Physician.** A physician assistant or graduate physician assistant must notify the Board ~~within two (2) weeks upon~~ prior to changing supervising physicians or alternate supervising physicians or adding an additional supervising physician. Such notification shall include: ~~(3-16-04)~~ ( )

- a. The name, business address and telephone of the new or additional supervising physician or alternate supervising physician(s); (3-16-04)
- b. The name, business address, and telephone number of the physician assistant or graduate physician assistant; and (3-16-04)
- c. Comply with the requirements of Subsection 030.03. (3-16-04)
- d. All supervising physicians and alternate supervising physicians must comply with the requirements of IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians." (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**042. PRESCRIPTION WRITING.**

**01. Approval and Authorization Required.** A physician assistant may issue written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V only in accordance with approval and authorization granted by the Board and in accordance with the current delegation of services agreement and shall be consistent with the regular prescriptive practice of the supervising or alternate supervising physician. (4-9-09)

**02. Application.** A physician assistant who wishes to apply for prescription writing authority shall submit to the Board an application for such purpose on forms supplied by the Board. In addition to the information contained in the general application for physician assistant approval, the application for prescription writing authority shall include the following information: (3-16-04)

**a.** Documentation of all pharmacology course content completed, the length and whether a passing grade was achieved (at least thirty (30) hours). (7-1-93)

**b.** A statement of the frequency with which the supervising physician will review prescriptions written or issued. (3-16-04)

**c.** A signed affidavit from the supervising physician certifying that, in the opinion of the supervising physician, the physician assistant is qualified to prescribe the drugs for which the physician assistant is seeking approval and authorization. (3-16-04)

**d.** The physician assistant to be authorized to prescribe Schedule II through V drugs shall be registered with the Federal Drug Enforcement Administration and the Idaho Board of Pharmacy. (3-15-02)

**03. Prescription Forms.** Prescription forms used by the physician assistant must be printed with the name, address, and telephone number of the physician assistant and of the supervising physician. A physician assistant shall not write prescriptions or complete or issue prescription blanks previously signed by any physician. (3-16-04)

**04. Record Keeping.** The physician assistant shall maintain accurate records, accounting for all prescriptions issued and medication delivered. (3-16-04)

**05. Pharmaceutical Samples.** The physician assistant who has prescriptive authority may request, receive, sign for and distribute professional samples of drugs and devices in accordance with his current delegation of services agreement and consistent with the regular prescriptive practice of the supervising physician. (3-16-04)

**06. Prescriber Drug Outlet.** The physician assistant who has prescriptive authority may dispense prescriptive drugs or devices directly to patients under the direction of the supervising physician and in accordance with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy." (3-20-14)

**07. Controlled Substances for Office Use.** The physician assistant who has prescriptive authority may order controlled substances for office use or distribution in accordance with the regulations of the Drug Enforcement Administration and the Idaho Board of Pharmacy and under the direction of the supervising physician. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. FEES -- LICENSE ISSUANCE, RENEWAL, CANCELLATION AND REINSTATEMENT.**

All licenses to practice as a physician assistant or graduate physician assistant shall be issued for a period of not more than five (5) years. All licenses shall expire on the expiration date printed on the face of the certificate and shall

become invalid after that date unless renewed. The Board shall collect a fee for each renewal year. The failure of any person to renew his license shall not deprive such person of the right to renewal, except as provided for herein and Title 67, Chapter 52, Idaho Code. All Fees are nonrefundable. (3-27-13)

**01. Licensure Fee.** The fee for initial licensure shall be no more than two hundred fifty dollars (\$250) for a physician assistant and graduate physician assistant. (4-9-09)

**02. License Renewal Fee.** The Board shall collect a fee of no more than one hundred fifty dollars (\$150) for each renewal year of a license. (4-9-09)

**03. License Cancellation.** (3-16-04)

**a.** Failure to renew a license to practice as a physician assistant and pay the renewal fee shall cause the license to be canceled. However, such license can be renewed up to two (2) years following cancellation by payment of past renewal fees, plus a penalty fee of fifty dollars (\$50). After two (2) years, an initial application for licensure with payment of the appropriate fee shall be filed with the Board. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (4-9-09)

**b.** Failure to renew a license to practice as a graduate physician assistant and pay the renewal fee shall cause the license to be canceled. However, such license can be renewed up to six (6) months following cancellation by payment of the past renewal fee, plus a penalty fee of no more than one hundred dollars (\$100). After six (6) months, an original application for licensure with payment of the appropriate fee shall be filed with the Board. (4-9-09)

**04. Inactive License.** (3-16-04)

**a.** A person holding a current license issued by the Board to practice as a physician assistant may be issued, upon written application provided by the Board and payment of required fees to the Board, an inactive license on the condition that he will not engage in the provision of patient services as a physician assistant in this state. An initial inactive license fee of no more than one hundred fifty dollars (\$150) shall be collected by the Board. (3-16-04)

**b.** Inactive licenses shall be issued for a period of not more than five (5) years and such licenses shall be renewed upon payment of an inactive license renewal fee of no more than one hundred dollars (\$100) for each renewal year. The inactive license certificate shall set forth its date of expiration. (3-16-04)

**c.** An inactive license may be converted to an active license to practice as a physician assistant upon written application and payment of required conversion fees of no more than one hundred fifty dollars (\$150) to the Board. The applicant must account for the time during which an inactive license was held and document continuing competence. The Board may, in its discretion, require a personal interview to evaluate the applicant's qualifications. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-16-04)

**05. Volunteer License.** (4-9-09)

**a.** License. Upon completion of an application and verification of qualifications, the Board may issue a volunteer license to a physician assistant who is retired from active practice for the purpose of providing physician assistant service to people who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular medical treatment. (4-9-09)

**b.** Retired Defined. A physician assistant previously holding a license to practice as a physician assistant in Idaho or another state shall be considered retired if, prior to the date of the application for a volunteer's license, he has: (4-9-09)

**i.** Allowed his license with active status to expire with the intent of ceasing active practice as a physician assistant for remuneration; or (4-9-09)

**ii.** Converted his active license to an inactive status with the intention of ceasing to actively practice

physician assistant for remuneration; or (4-9-09)

iii. Converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice as a physician assistant. (4-9-09)

c. Eligibility. A physician assistant whose license has been restricted, suspended, revoked, surrendered, resigned, converted, allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action shall not be eligible for a volunteer license. The volunteer license cannot be converted to a license with active, inactive or temporary status. (4-9-09)

d. Application. The application for a volunteer license shall include the requirements listed in Section 021 of these rules ~~and, except for the certification requirement in Subsection 021.04 of these rules. In addition, the application shall include the following:~~ (4-9-09) ( )

i. Verification that the applicant held an active physician assistant license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer license. (4-9-09)

ii. The Board may at its discretion issue a volunteer license to a physician assistant who has not held an active license in good standing for greater than five (5) years if the applicant has completed an examination acceptable to the Board that demonstrates the applicant possesses the knowledge and skills required to practice as a physician assistant. (4-9-09)

**06. Temporary Licensure Fee.** The fee for temporary licensure, which may be prorated pursuant to Section 54-1808, Idaho Code, shall be no more than one hundred eighty dollars (\$180). (3-27-13)



## **IDAPA 23 – BOARD OF NURSING**

### **23.01.01 – RULES OF THE IDAHO BOARD OF NURSING**

#### **DOCKET NO. 23-0101-1602**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

This pending rule is being adopted in order to expand the pool of qualified healthcare professionals who can serve as preceptors for APRN students in clinical settings thereby expanding the number or placement sites for APRN clinical learning opportunities. The rulemaking removes a restriction that only other licensed APRN can function as clinical preceptors and expressly adds physicians and physician assistants to the list of qualified persons authorized to be preceptors.

There are no changes to the pending 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 604-609](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sandra Evans, 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 TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 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 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 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:

Clinical preceptors may be used to enhance clinical learning experiences for practical, registered and advanced practice registered nurse students enrolled in approved nursing education programs. Board of Nursing Rules Sections 010 and 640 currently limit clinical preceptors for students enrolled in nursing programs in the state to include only nurses credentialed for nursing practice at or above the license level for which the student is preparing. This is acceptable for students in registered and practical nursing programs; however, it creates a serious and unnecessary impediment for students in advanced practice registered nurse (APRN) educational programs who often participate in primary care clinical experiences in healthcare clinics where a licensed APRN may not be present and instead a physician (MD, DO) or physician assistant (PA) may be the only licensed primary care provider available to serve as the APRN student preceptor.

APRN student clinical learning experiences are limited due to competing demands from other disciplines (e.g., medicine, pharmacy) and from both in and out-of-state APRN, MD and PA educational programs. This rulemaking is necessary to remove this Board-created obstacle in order to allow APRN students to participate in valuable clinical opportunities.

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

It is imperative that this Board-created obstacle be removed in order to immediately open more clinical learning opportunities for APRN students as early as the 2016 fall semester and then beyond.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published under Docket No. 23-0101-1601 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 temporary and proposed rule, contact Sandra Evans, Executive Director, at (208) 577-2482 or at [sandra.evans@ibn.idaho.gov](mailto:sandra.evans@ibn.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 16th day of August, 2016.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-1602**

**010. DEFINITIONS.**

**01. Abandonment.** The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to a qualified provider or to a staff supervisor, prior to leaving the assignment, constitutes termination of the nurse/patient relationship. (4-4-13)

**02. Accreditation.** The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing. (7-1-93)

**03. Administration of Medications.** The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology, and pharmacology. Only persons authorized under Board statutes and these rules may administer medications and treatments as prescribed by health care providers authorized to prescribe medications. (4-7-11)

**04. Approval.** The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board. (5-3-03)

**05. Assist.** To aid or help in the accomplishment of a prescribed set of actions. (7-1-93)

**06. Assistance With Medications.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications. (5-3-03)

**07. Board.** The Idaho Board of Nursing. (7-1-93)

**08. Board Staff.** The executive director and other such personnel as are needed to implement the Nursing Practice Act and these rules. (7-1-93)

**09. Charge Nurse.** A licensed nurse who bears primary responsibility for assessing, planning, prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care. (5-3-03)

**10. Clinical Preceptor.** A licensed registered nurse or other qualified individual as defined in these rules who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. ~~(5-3-03)~~ ( )

**11. Competence.** Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)

- 12. Curriculum.** The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)
- 13. Delegation.** The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)
- 14. Disability.** Any physical, mental, or emotional condition that interferes with the nurse's ability to practice nursing safely and competently. (5-3-03)
- 15. Emeritus License.** A license issued to a nurse who desires to retire from active practice for any length of time. (5-3-03)
- 16. Licensing Examination.** A licensing examination that is acceptable to the Board. (5-3-03)
- 17. License in Good Standing.** A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)
- 18. Limited License.** A nursing license subject to specific restrictions, terms, and conditions. (5-3-03)
- 19. Nursing Assessment.** The systematic collection of data related to the patient's health care needs. (5-3-03)
- 20. Nursing Diagnosis.** The clinical judgment or conclusion regarding patient/client/family/community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)
- 21. Nursing Intervention.** An action deliberately selected and performed to support the plan of care. (5-3-03)
- 22. Nursing Jurisdiction.** Unless the context clearly denotes a different meaning, when used in these rules, the term nursing jurisdiction shall mean any or all of the fifty (50) states, U.S. territories or commonwealths, as the case may be. (4-4-13)
- 23. Nursing Service Administrator.** A licensed registered nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)
- 24. Organized Program of Study.** A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)
- 25. Patient.** An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)
- 26. Patient Education.** The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)
- 27. Plan of Care.** The goal-oriented strategy developed to assist individuals or groups to achieve optimal health potential. (5-3-03)
- 28. Practice Standards.** General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)
- 29. Probation.** A period of time set forth in an order in which certain restrictions, conditions or limitations are imposed on a licensee. (5-3-03)

30. **Protocols.** Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)
31. **Revocation.** Termination of the authorization to practice. (5-3-03)
32. **Scope of Practice.** The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)
33. **Supervision.** Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. (4-6-05)
34. **Suspension.** An order temporarily withdrawing a nurse's right to practice nursing. (5-3-03)
35. **Technician/Technologist.** These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants. (3-30-07)
36. **Universal Standards.** The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease, also referred to as "Standard Precautions." (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**640. FACULTY QUALIFICATIONS.**

01. **Programs for Unlicensed Assistive Personnel.** Primary instructors shall be approved by the Board and shall have: (4-5-00)
- a. A current unencumbered license to practice as a registered nurse in this state; (4-5-00)
  - b. Evidence of three (3) years experience working as a registered nurse; (4-5-00)
  - c. Evidence of two (2) years experience in caring for the elderly or chronically ill of any age; and (4-5-00)
  - d. Evidence of completion of a course in methods of instruction or a Train-the-Trainer type program. (4-5-00)
  - e. Licensed practical nurses with a minimum of two (2) years experience in caring for the elderly or chronically ill of any age may assist with skills supervision under the supervision of an approved primary instructor. (4-5-00)
02. **Practical Nurse Program Faculty Qualifications.** Nursing faculty who have primary responsibility for planning, implementing, and evaluating curriculum in a program leading to licensure as a practical nurse shall have: (4-5-00)
- a. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
  - b. A minimum of a baccalaureate degree with a major in nursing; and (4-5-00)
  - c. Evidence of nursing practice experience. (4-5-00)
03. **Registered Nurse Program Faculty Qualifications.** There shall be sufficient faculty to achieve the purpose of the program. (4-5-00)

a. Nursing faculty who have primary responsibility for planning, implementing, and evaluating curriculum in a program leading to licensure as a registered nurse shall have: (4-5-00)

- i. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
- ii. A minimum of a master's degree with a major in nursing; and (4-5-00)
- iii. Evidence of nursing practice experience. (4-5-00)

b. Additional support faculty necessary to accomplish program objectives shall have: (4-5-00)

- i. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
- ii. A minimum of a baccalaureate degree with a major in nursing; and (4-5-00)
- iii. A plan approved by the Board for accomplishment of the master's of nursing within three (3) years of appointment to the faculty position. (4-5-00)

**04. Advanced Practice Registered Nurse Program Faculty Qualifications.** There shall be sufficient faculty to achieve the purpose of the program. Faculty in an advanced practice registered nurse program shall have: (4-5-00)

- a. A current, unencumbered license to practice as a registered nurse in this state; and (4-5-00)
- b. A master's degree and an earned doctoral degree, one (1) of which is in nursing; or (4-5-00)
- c. A master's degree with a major in nursing and an appropriate advanced practice registered nurse credential if responsible for courses in a specific advanced practice registered nurse category; and (4-5-00)
- d. Evidence of nursing practice experience. (4-5-00)

**05. Clinical Preceptors in Registered Nurse, Practical Nurse, and Advanced Practice Registered Nurse Programs.** Clinical preceptors may be used to enhance clinical learning experiences. ~~Clinical preceptors shall be credentialed for nursing practice at or above the level for which the student is preparing.~~ (4-5-00)( )

a. Clinical preceptors in registered and practical nurse programs shall be licensed for nursing practice at or above the license role for which the student is preparing. ( )

b. Clinical preceptors in advanced practice registered nurse programs shall be licensed to practice as an advanced practice registered nurse (APRN), a physician (MD or DO), or a physician assistant (PA) in an area of practice relevant to the educational course objectives. ( )

~~c.~~ Student-Preceptor ratio shall be appropriate to accomplishment of learning objectives; to provide for patient safety; and to the complexity of the clinical situation. (4-5-00)

~~b~~d. Criteria for selecting preceptors shall be in writing. (4-5-00)

~~e.~~ Functions and responsibilities of the preceptor shall be clearly delineated in a written agreement between the agency, the preceptor, and the educational program. (4-5-00)

~~f.~~ The faculty shall be responsible to: (4-5-00)

- i. Make arrangements with agency personnel in advance of the clinical experience, providing information such as numbers of students to be in the agency at a time, dates and times scheduled for clinical experience, faculty supervision to be provided, and arrange for formal orientation of preceptors. (4-5-00)

ii. Inform agency personnel of faculty-defined objectives and serve as a guide for selecting students' learning experiences and making assignments. (4-5-00)

iii. Monitor students' assignments, make periodic site visits to the agency, evaluate students' performance on a regular basis with input from the student and from the preceptor, and be available by telecommunication during students' scheduled clinical time. (4-5-00)

**eg.** Provide direct supervision, by either a qualified faculty person or an experienced registered nurse employee of the agency, during initial home visits and whenever the student is implementing a nursing skill for the first time or a nursing skill with which the student has had limited experience. (4-5-00)

**06. Continued Study.** The parent institution will support and make provisions for continued professional development of the faculty. (7-1-91)

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.12.01 – RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS**

**DOCKET NO. 24-1201-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-2305 and 54-5713, Idaho Code.

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

There are no changes to the pending 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 625-631](#).

**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 18th 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 Sections 54-2305 and 54-5713, 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 rules are being amended to clarify who can provide on-line continuing education. Additionally, they establish that a service extender cannot provide service until after the supervisory plan is approved by the Board and creates a new category for a service extender who will be providing psychometrician services. Further, the rules are being amended to establish Telepsychology practice in accordance with the Idaho Telehealth Access Act, Title 54, Chapter 57, Idaho Code.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 DOCKET NO. 24-1201-1601**

**402. GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION CREDITS (RULE 402).**

**01. Continuing Education Credit.** Continuing education credit will be given to formally organized workshops or classes with an attendance roster and preassigned continuing education credit offered in association with or under the auspices of: (7-1-93)

- a.** Regionally accredited institutions of higher education. (7-1-93)
- b.** The American Psychological Association. (7-1-93)
- c.** A Regional Psychological Association. (7-1-93)
- d.** A State Psychological Association. (7-1-93)
- e.** Credit will be given for the number of credit hours preauthorized by the sponsoring agency with no upper limit on the number of hours. (7-1-93)

**02. Credit for International, National and Regional Meetings of Psychological Organizations.** Six (6) hours of continuing education credit will be allowed for documented attendance at international, national and



regional meetings of psychological organizations.

(7-1-93)

**03. Credit for Other Relevant Workshops, Classes or Training Experiences.** Other relevant workshops, classes or training experiences when not offered, approved, or provided by an entity in Subsection 402.01, may receive up to six (6) hours of credit per experience provided they are conducted by a licensed or reputable psychologist or other mental health professional. Each documented hour of training experience counts as one (1) hour of continuing education experience.

(4-4-13)

**04. Presentation of Papers.** Presentation of papers at international, national, regional or state psychological or other professional associations may be counted as equivalent to six (6) hours per event. Only actual presentation time may be counted; preparation time does not qualify for credit. The licensee must provide the Board with a letter from a sponsor, host organization, or professional colleague, copy of the program, and a summary of the evaluations from the event.

(3-29-10)

**05. Self-Study, Lectures or Public or Professional Publications and Presentations.** The Board also recognizes the value of self-study, lectures or public or professional publications and presentations (including for example, in the case of the university faculty, preparation of a new course). Therefore, the Board will allow credit for six (6) hours of individual study per year.

(7-1-93)

**a. Self-Study.** The reading of a publication may qualify for credit with proper documentation verifying completion. A licensee seeking credit for reading a publication must submit results from a test on the information contained within the publication. If a test is not available, the licensee must seek pre-approval of the Board.

(3-29-10)

**b. Professional publications.** Publication activities are limited to articles in professional journals, a chapter in an edited book, or a published book. The licensee must provide the Board with a copy of the cover page of the article or book in which the licensee has been published. For chapters of an edited book, licensees must submit a copy of the table of contents.

(3-29-10)

**06. Board Assessment of Continuing Education Activities.** The Board of Psychologist Examiners may avail itself of help and consultation from the American Psychological Association or the Idaho Psychological Association in assessing the appropriateness of continuing education activities.

(3-29-10)

**07. On-Line Education.** A maximum of ten (10) on-line continuing education hours relevant to the practice of psychology may be counted during each reporting period.

(3-29-10)

**a.** ~~On-line continuing education hours must be offered by or obtained from regionally accredited institutions of higher education or approved by the American Psychological Association~~ Continuing education credit will be given to on-line education offered in association with or under the auspices of the organizations listed in Subsections 402.01.a. through d. of these rules.

~~(3-29-10)~~ ( )

**b.** The licensee must provide the Board with a copy of the certification, verified by the authorized signatures from the course instructors, providers, or sponsoring institution, substantiating any hours completed by the licensee.

(3-29-10)

**08. Teleconferences.** To qualify for credit, teleconferences must feature an interactive format. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor or that have a facilitator present at the conference site. The licensee must provide the Board with a copy of the certificate, or a letter signed by course instructors, providers, or sponsoring institution, substantiating any hours attended by licensee.

(4-4-13)

**a.** When offered, approved, or provided by entities in Subsection 402.01, the number of hours that may be counted during each reporting period is not limited.

(4-4-13)

**b.** When not offered, approved, or provided by an entity in Subsection 402.01, a maximum of six (6) hours may be counted during each reporting period.

(4-4-13)

403. -- 449. (RESERVED)

**450. GUIDELINES FOR USE OF SERVICE EXTENDERS TO LICENSED PSYCHOLOGISTS (RULE 450).**

The Board recognizes that licensed psychologists may choose to extend their services by using service extenders. The Board provides general rules to cover all service extenders as well as specific rules to cover service extenders with different levels of training and experience. (7-1-93)

**01. General Provisions for Licensed Psychologists Extending Their Services Through Others.** (7-1-93)

- a.** The licensed psychologist exercising administrative control for a service extender shall: (7-1-93)
- i.** Have the authority to cause termination of compensation for the service extender. (7-1-93)
- ii.** Have the authority to cause the suspension or removal of the service extender from his position as a service provider. (7-1-93)

- b.** The licensed psychologist exercising professional direction for a service extender shall: (7-1-93)
- i.** ~~Within thirty (30) days after~~ Prior to employing the service extender, formulate and provide to the Board a written supervisory plan for each service extender and obtain approval for the plan. The plan shall include provisions for supervisory sessions and chart review. If the psychologist requires tapes to be made of psychological services delivered by the service extender, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the person extending the services of the licensed psychologist. The plan shall be accompanied by a completed application form and appropriate application fee. ~~(3-19-07)~~ ( )

- ii.** Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. There will be a minimum of one (1) hour of face-to-face supervisory contact by a licensed psychologist with the service extender for each one (1) to twenty (20) hours of services provided by the service extender during any calendar week. At least one half (1/2) of this face-to-face supervisory contact will be conducted individually, and up to one half (1/2) of this face-to-face supervisory contact may be provided using a group format. A written record of this supervisory contact, including the type of activities conducted by the service extender, shall be maintained by the licensed psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are extended or during the week following. In no case will services be extended more than two (2) weeks without supervisory contact between the service extender and a licensed psychologist. (7-1-93)

- iii.** Provide the service extender a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the service extender of his intention to abide by them. (7-1-93)

**c.** Supervision of service extenders through electronic communications, including video conferencing, cannot replace face-to-face supervision. Psychologists will ensure that the service that they provide through the use of service extenders is provided according to all applicable laws and rules. ( )

**02. Qualifications for Service Extenders.** (7-1-93)

- a.** Category I: A service extender will be placed in Category I if: (7-1-93)
- i.** The licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a license issued by the state of Idaho to practice a specific profession, and that the issuance of that license requires the licensee hold a master's degree or its equivalent as determined by the Board; or (7-1-93)
- ii.** The service extender meets the criteria for Category II specified below and the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service

extender has satisfactorily functioned as a service extender to one (1) or more licensed psychologist for at least twenty (20) hours per calendar week over a period totaling two hundred sixty (260) weeks. (7-1-93)

**b.** Category II: A service extender will be placed in Category II if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree or equivalent from a program in psychology, counseling, or human development as determined by the Board. (7-1-93)( )

**c.** Category III: A service extender will be placed in Category III if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree or equivalent from a program in psychology, counseling, or human development as determined by the Board, and the service extender will only provide psychometrician services. Such services are defined as administering, scoring, and/or summarizing psychological or neuropsychological tests and test data that require specialized training. Interpretation of the testing data must be performed by the licensed psychologist. Service extenders in Category III will not be allowed to perform psychotherapy, intake assessments, or other services outside the scope of psychometric services defined above. The licensed psychologist wishing to employ the service extender must also verify in writing to the satisfaction of the Board that the service extender has been properly trained in all of the testing instruments that the service extender will administer at the start of employment and will continue to receive proper training in any new testing instruments utilized by the service extender over the course of employment. ( )

**03. Conditions for Use of Service Extenders.** (7-1-93)

**a.** All persons used to extend the services of a licensed psychologist shall be under the direct and continuing administrative control and professional direction of a licensed psychologist. These service extenders may not use any title incorporating the word "psychologist" or any of its variants or derivatives, e.g. "psychological," "psychotherapist." (5-8-09)

**b.** Work assignments shall be commensurate with the skills of the service extender and procedures shall be planned in consultation with the licensed psychologist under all circumstances. (7-1-93)

**c.** Public announcement of fees and services, as well as contact with lay or professional public shall be offered only in the name of the licensed psychologist whose services are being extended. However, persons licensed to practice professions other than psychology may make note of their status in such announcements or contacts. (7-1-93)

**d.** Setting and collecting of fees shall remain the sole domain of the licensed psychologist; excepting that when a service extender is used to provide services of the licensed psychologist, third party payers shall be informed of this occurrence in writing at the time of billing. Unless otherwise provided in these rules and regulations, licensed psychologists may neither claim or imply to service recipients or to third party payers an ability to extend their services through any person who has not been approved as a service extender to that psychologist as specified in this section. (7-1-93)

**e.** All service recipients shall sign a written notice of the service extender's status as a service extender for the licensed psychologist. A copy of the signed written notice will be maintained on file with the licensed psychologist. (7-1-93)

**f.** Within the first three (3) contacts, the licensed psychologist shall have face-to-face contact with each service recipient. (7-1-93)

**g.** A licensed psychologist shall be available to both the service extender and the service recipient for emergency consultation. (7-1-93)

**h.** Service Extenders shall be housed in the same service delivery site as the licensed psychologist whose services they extend. Whatever other activities they may be qualified to perform, service extenders shall limit themselves to acting as service extenders of the licensed psychologist when providing direct services so long as they are physically located in the offices of the licensed psychologist. (7-1-93)

i. A service extender in Category I may deliver as much as, but not more than fifty percent (50%) of their service while the licensed psychologist is not physically present at the service delivery site. A service extender in Category II may deliver as much as, but not more than twenty-five percent (25%) of their service while the licensed psychologist is not physically present at the service delivery site. Service extenders in the Category III may deliver as much as, but not more than seventy-five percent (75%) of their service while the licensed psychologist is not physically present at the service delivery site. Service Extenders providing as many as, but no more than, three (3) hours of service extension per calendar week shall be exempted from the on-site provisions of Section 450 of this rule. Without notification to the Board, short term exemption from this rule for atypical circumstances, such as irregular travel by the licensed psychologist, may occur for periods as long as, but no longer than three (3) calendar weeks. Longer exemptions may be granted at the discretion of the Board on written request by the licensed psychologist to the Board. (5-8-09)( )

j. The licensed psychologist shall employ no more than three (3) service extenders. (3-18-99)

k. When a licensed psychologist terminates employment of a service extender, the licensed psychologist will notify the Board in writing within thirty (30) days. (7-1-93)

l. At the time of license renewal the licensed psychologist shall submit for each service extender the appropriate fee together with certification to the Board that they possess: (3-19-07)

i. A written record of supervisory contact for the previous twelve (12) months; and (3-20-04)

ii. The percentage of time during the previous twelve (12) months that the service extender extended services while the licensed psychologist was at the service delivery site; and (3-20-04)

iii. An updated plan for the supervision of each of his service extenders. (3-20-04)

m. Documentation of supervisory notes, hours of supervision, number of hours on-site while the service extender provided services, and plan of supervision shall be maintained by the supervisor for not less than three (3) years for each service extender and submitted to the Board upon request. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. TELEPSYCHOLOGY.**

This rule supplements Title 54, Chapter 57, Idaho Code, the Idaho Telehealth Access Act, the American Psychological Association Guidelines for the Practice of Telepsychology, and all other laws and rules applicable to the practice of telepsychology in this state. ( )

**01. Definitions.** For purposes of telepsychology services, the following terms are defined as follows: ( )

**a. Emergency.** Emergency means a situation in which there is an occurrence that poses an imminent threat of a life threatening condition or severe bodily harm. ( )

**b. Information Technology.** Information technology means the production, storage, and communication of information using computers and microelectronics including but not limited to telephones, mobile devices, interactive videoconferencing, email, chat, text, social media, and other Internet based services. ( )

**c. Telehealth Provider.** Telehealth provider means a person who is licensed, required to be licensed, or, if located outside of Idaho, would be required to be licensed if located in Idaho by Title 54, Chapter 23, Idaho Code and who provides or offers to provide telepsychology services to persons who are located in or who reside in Idaho. ( )

**d. Telepsychology Services.** Telepsychology services mean psychological services provided to a

person through the use of information technology for the purpose of assessing, testing, diagnosing, treating, educating, or consulting. Telepsychology services may be synchronous or asynchronous. ( )

**02. General.** ( )

**a.** When telepsychology services are contemplated, a telehealth provider will document individualized potential benefits and potential risks to the service recipient(s). ( )

**b.** Before telepsychology services are provided, a telehealth provider will document an emergency plan in the service recipient's record. The plan will specify the procedure for dealing with emergencies that will in an effective and timely way, provide for the service recipient's welfare. ( )

**c.** Except for psycho-educational purposes, the use of avatars for telepsychology services is prohibited. ( )

**03. Informed Consent.** Telehealth providers will, upon initial and subsequent contact with the service recipient: ( )

**a.** Make reasonable efforts to verify the identity of the service recipient; ( )

**b.** Provide to the service recipient alternative means of contacting the telehealth provider should communications be disrupted during the provision of services. ( )

**c.** Except in an emergency, prior to providing telepsychology services, obtain the written, informed consent of the service recipient(s), consistent with accepted professional and legal requirements concerning: ( )

**i.** The limitations and challenges of using information technology to provide telepsychology services; ( )

**ii.** The potential for breaches in confidentiality of information while delivering telepsychology services; ( )

**iii.** The risks of sudden and unpredictable disruption of telepsychology services and the alternative means by which communication may be re-established; ( )

**d.** Discuss who, in addition to the provider and the service recipient, may have access to the content of telecommunications between the provider and service recipient; ( )

**e.** Inform the service recipient of when and how the provider will respond to electronic messages; ( )

**f.** Ensure that a written agreement has been executed with service recipient(s) concerning compensation, billing, and payment arrangements. ( )

**04. Security and Confidentiality.** Telehealth providers must: ( )

**a.** Use secure communications when providing telepsychology services whenever feasible and document consent for the use of non-secure communication means when they are necessary; ( )

**b.** Document how electronic communications are stored and maintain confidentiality of communications with service recipients; ( )

**c.** Ensure that unauthorized persons cannot recover or access confidential electronically-stored information when retained by the provider and after the data or equipment in which the data is stored has been discarded. ( )

d. Inform service recipients how electronic communications may be sent to the provider and how the provider will store these communications. ( )

**05. Assessment. ( )**

a. When conducting psychological assessments using telepsychology services, telehealth providers must only use test and assessment procedures that are empirically supported for the patient population being evaluated. ( )

b. Telehealth providers using telepsychology for assessment must ensure that the identity of service recipients remains secure, that test security is maintained, that test-taking conditions are conducive to quiet and private test administration, and that the parameters of the test(s) are not compromised. ( )

c. Telehealth providers will explain to service recipients the potential limitations of conclusions and recommendations drawn from the results on online assessments and will document these limitations in the findings or report. Treatment will not be based solely upon the results of online assessments. ( )

**06. Interjurisdictional Practice. ( )**

a. Before delivering telepsychology services to recipients across state, territorial, and international boundaries, telehealth providers should familiarize themselves and ensure that they comply with all applicable laws. ( )

b. Telehealth providers who are licensed to practice psychology pursuant to Title 54, Chapter 23, Idaho Code are under the jurisdiction of the Board when providing telepsychology services to Idaho residents located either within or outside of Idaho and to all recipients located within the state of Idaho. ( )

c. Except when providing telepsychology services in response to an emergency, telehealth providers who are not licensed to practice psychology in this state, who do not hold a temporary license under Section 300, or who are not otherwise exempt by law, but who are nevertheless providing telepsychology services to recipients located in this state, are guilty of a misdemeanor crime under Chapter 23, Title 54, Idaho Code. ( )

**60~~4~~2. -- 624. (RESERVED)**

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.16.01 – RULES OF THE STATE BOARD OF DENTURITRY**

#### **DOCKET NO. 24-1601-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-3309, Idaho Code.

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

The rule changes will allow flexibility on meeting dates, clarify the examination times and process, add supervisor requirements for the apprenticeship program, and clarify the standards of conduct. In response to a written comment received from a licensee, the Board decided at an open and noticed meeting to require internship supervisors to have actively practiced their profession for three (3) of the past five (5) years rather than for the past five (5) years.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 632-638](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Mitchell Toryanski at (208) 334-3233.

DATED this 4th 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 54-3309.

**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 rule changes will allow flexibility on meeting dates, clarify the examination times and process, add supervisor requirements for the apprenticeship program, and clarify the standards of conduct.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 DOCKET NO. 24-1601-1601**

**100. BOARD MEETINGS (RULE 100).**

**01.** ~~Dates~~**Meetings**. The board shall meet ~~regularly in April and November of each year~~ at least annually and at such other times as may be determined by the chairman or by written request of two (2) members of the board. ~~(+2-03)~~( )



~~02. Place. Meetings shall be held at the Bureau of Occupational Licenses. (7-1-93)~~

~~03. Dates and Places. Dates and places may be changed through notification by the board at least ten (10) days prior to the regular meeting date or the date established for a meeting whichever is earlier. (7-1-93)~~

101. -- 149. (RESERVED)

**150. EXAMINATIONS (RULE 150).**

**01. Date of Licensure Examination.** The licensure examination will be held ~~at least semi-annually in June and January~~ no less than two (2) times per year and at such ~~other~~ times and places as may be determined by the Board. ~~(4-2-03)( )~~

~~02. Place. All examinations will be administered at the time and place as designated by the board. (3-10-00)~~

**03. Content.** Examinations shall include both a written theory examination and a practical demonstration of skills. (4-2-03)

**04. Grading.** An applicant must obtain a score of seventy-five percent (75%) or better on each part of the examination in order to pass the examination. (4-2-03)

**05. Re-Examination.** (4-2-03)

a. Applicants who fail either part or all of the examination shall be required to make application and pay the required fees prior to being eligible to retake the failed part of the examination. (4-2-03)

b. Applicants failing either part or all of the examination on the first attempt will not be required to complete any additional instruction prior to being eligible to make application and retake the examination. (4-2-03)

c. Applicants failing either part or all of the examination on a second attempt and all subsequent attempts shall not be eligible to make application and retake the examination within one (1) year of the date of the examination failure The Board may recommend additional course work or clinical work for any applicant who has failed an examination two (2) or more times. ~~(4-2-03)( )~~

151. -- 199. (RESERVED)

**200. APPLICATIONS (RULE 200).**

**01. Application Filing Date.** Licensure applications must be received in the Bureau of Occupational Licenses ~~ninety (90)~~ at least seven (7) business days prior to the next scheduled ~~examinations~~ meeting of the Board. Applications received after that date ~~will~~ may be held over for the board's next ~~scheduled examination~~ meeting. ~~(3-10-00)( )~~

**02. Application Form for Licensure.** Applications for licensure shall be made on forms approved by the board and furnished by the Bureau of Occupational Licenses and shall include all other documents necessary to establish the applicant meets the requirements for licensure except examination and is eligible to take the licensure examination. (7-1-93)

**03. Application Must Be Complete.** All applications must be complete in every respect and accompanied by the appropriate fees before being considered received by the Bureau of Occupational Licenses. (7-1-93)

**04. Authorization for Examination.** ( )

a. After the Board evaluates the applicant's qualifications to take the examination the applicant shall

be notified in writing of the approval or denial, and, if denied, the reason for the denial. ( )

b. At the time the Board approves an applicant to take the examination the Board shall set the date and location(s) of the next examination if it has not already been set. Approved applicants shall be notified of the date and location(s) of the next examination. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. INTERNSHIP (RULE 300).**

**01. Requirements and Conditions for Internship.** (3-10-00)

a. To be eligible for internship the applicant must have completed: (3-10-00)

i. The educational requirements set forth in Section 54-3310(b), Idaho Code; or (3-10-00)

ii. Have dentistry experience of three (3) years within the five (5) years immediately preceding application. (3-10-00)

b. Where an internship is established based on experience, the internship is valid only while the intern is actively pursuing completion of Idaho licensure requirements. (3-10-00)

c. Application shall be made on forms provided by the Bureau of Occupational Licenses and shall: (3-10-00)

i. Document the location of practice; (3-10-00)

ii. Include the name and address of the supervising dentist or dentist; (3-10-00)

iii. Include a sworn or affirmed statement by the supervising dentist or dentist; (3-10-00)

iv. Include a sworn or affirmed statement by the supervisor accepting supervision of the intern; (3-10-00)

v. Include a sworn statement by applicant that he is knowledgeable of law and rules and will abide by all requirements of such law and rules; and (3-10-00)

vi. Include such other information necessary to establish applicant's qualifications for licensure as a dentist and establish compliance with pre-intern requirements. (3-10-00)

d. The supervising dentist or dentist must be present and directly observe any intern interaction with a patient. (3-29-10)

e. Two (2) years of internship under the supervision of a licensed dentist shall be completed in not less than twenty-four (24) months and shall not exceed thirty (30) months except as approved by the board. (4-2-08)

**02. Internship Equivalency.** A person shall be considered to have the equivalent of two (2) years internship under a licensed dentist who has met and verifies one (1) of the following within the five (5) years immediately preceding application: (3-10-00)

a. Two (2) years internship as a denture lab technician under a licensed dentist; or (3-10-00)

b. Two (2) years in the military as a denture lab technician; or (3-10-00)

c. Three (3) years experience as a dentist under licensure in another state or Canada. (3-10-00)

**03. Internship Not to Exceed One Year.** Internship not to exceed one (1) year acquired through a formal training program in an acceptable school will be accepted toward the two (2) year required internship for licensure. (7-1-93)

**04. Training Requirements.** Each year of required internship shall consist of two thousand (2,000) clock hours of training and performance of the following minimum procedures for licensure. (7-1-93)

**a.** Procedures shall include all steps required in constructing a finished denture but are not limited to the following: (7-1-93)

i. Patient charting -- thirty-six (36) minimum. (7-1-93)

ii. Operatory sanitation -- thirty-six (36) minimum. (7-1-93)

iii. Oral examination -- thirty-six (36) minimum. (7-1-93)

iv. Impressions, preliminary and final (pour models, custom trays) -- thirty-six (36) minimum. (7-1-93)

v. Bite registrations -- twelve (12) minimum. (7-1-93)

vi. Articulations -- twelve (12) minimum. (7-1-93)

vii. Set ups -- twelve (12) minimum. (7-1-93)

viii. Try ins -- twelve (12) minimum. (7-1-93)

ix. Processing (wax up, flask-boil out, packing, grind-polish) -- thirty-six (36) minimum. (7-1-93)

x. Delivery-post adjustment -- thirty-six (36) minimum. (7-1-93)

**b.** Processed relines (one (1) plate = one (1) unit) -- twenty-four (24) units. (7-1-93)

**c.** Tooth repairs -- forty-eight (48) minimum. (7-1-93)

**d.** Broken or fractured plates or partials -- forty-eight (48) minimum. (7-1-93)

**05. Reporting Requirements.** Interns must file reports, attested to by the supervisor, with the board on forms provided by the Bureau of Occupational Licenses on a monthly basis and recapped at termination or completion of the training. (7-1-93)

**06. Denture Clinic Requirements.** Denture clinic requirements for approved internship training: (7-1-93)

**a.** There shall be not more than one (1) internee per licensed denturist or dentist who is practicing at the clinic on a full time basis. (7-1-93)

**b.** There shall be a separate work station in the laboratory area for each intern with standard equipment, i.e. lathe, torch and storage space. The intern shall provide necessary hand tools to perform the duties of the denture profession. Use of the operatory facilities and other equipment will be shared with the intern. (7-1-93)

**07. Internship Supervisor Requirements.** ( )

**a. Supervisors. A supervisor must:** ( )

**i. Be approved in advance by the Board for each internship.** ( )

- ii. Not have been the subject of any disciplinary action by the Board, by the Idaho Board of Dentistry or by any other jurisdiction for five (5) years immediately prior to being approved as the supervisor. ( )
- b. Supervisor that is a denturist. A supervisor that is a denturist must: ( )
  - i. Hold an Idaho denturist license that is current and in good standing and is renewed as provided in these rules; and ( )
  - ii. Have actively practiced dentistry for at least three (3) of the five (5) years immediately prior to being approved as the supervisor. ( )
- c. Supervisor that is a dentist. A supervisor that is a dentist must: ( )
  - i. Hold an Idaho dentist license that is current and in good standing and is renewed as provided in Chapter 9, Title 54, Idaho Code; and ( )
  - ii. Have actively practiced general dentistry, or a dental specialty accepted by the Board, for at least three (3) of the five (5) years immediately prior to being approved as a supervisor. ( )
- d. Supervise only one (1) intern. A supervisor will not be approved to supervise more than one (1) intern at a time. ( )
- e. Termination of supervisor approval. Approval of the supervisor immediately terminates if the supervisor is disciplined or ceases to meet supervisor requirements. ( )

**301. -- 314. (RESERVED)**

**315. INACTIVE LICENSURE STATUS (RULE 315).**

- 01. Request License e Placed on Inactive Status.** A dentistry licensee may request the board that his license be placed upon inactive status. (3-10-00)
- 02. License Fee for Inactive Status.** A licensee shall be required to submit an annual renewal fee of fifty dollars (\$50) in order to remain on inactive status. (3-10-00)
- 03. While on Inactive Status.** A licensee on inactive status shall not provide or perform denturist services as defined in these rules. (3-10-00)
- 04. Reactivating Inactive License.** A licensee on inactive status may reactivate his license to active status by paying the renewal fee for an active license and providing proof they have completed and obtained such continuing education as required by board rule of not less than twelve (12) hours for each year of inactive licensure. (3-10-00)
- 05. License Inactive over Five Years.** No license may remain on inactive status for more than five (5) years. (3-10-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. STANDARDS OF CONDUCT AND PRACTICE (RULE 450).**

- 01. Sanitation. (7-1-93)**
  - a.** There shall be three (3) separate rooms; a reception room, and operatory room and a laboratory. (7-1-93)

- b. The operatory room shall have hot and cold running water, basin with approved disposal system; disinfectant soap; single-use towels, a cuspidor with running water and a closed waste receptacle. (8-24-94)
- c. The laboratory room shall have hot and cold running water, and basin with approved disposal system. (8-24-94)
- d. There shall be a method of sterilization and disinfection evident and in use to insure the protection of the public. (8-24-94)
- e. All floors, walls, ceiling and benches shall be kept in a sanitary condition at all times. (8-24-94)
- f. Every patient shall have a separate and clean bib and a disposable cup. (7-1-93)
- g. Every denturist shall wear a clean and professional garment. (7-1-93)
- h. The hands of every denturist shall be washed in the presence of every patient with germicidal or antiseptic soap and water. Every denturist shall wear disposable gloves. (8-24-94)
- i. Adequate and conveniently located toilet facilities with hot and cold running water, basin with approved disposal system, soap and single use towels will be provided within the building. (8-24-94)
- j. All denturist offices shall be open to inspection anytime during the business hours to inspection by the board or its agents. (7-1-93)
- k. All telephones must have emergency phone numbers placed on the telephone. (7-1-93)
- 02. Office Standards.** (7-1-93)
- a. Denturists shall take care to use proper sterilization and sanitation techniques in all phases of their work. (7-1-93)
- b. A complete record of each patient shall be kept. (7-1-93)
- c. All teeth and materials used shall meet ADA standards. (7-1-93)
- 03. Advertisements.** (4-2-08)
- a. No denturist shall disseminate or cause the dissemination of any advertisement or advertising which is any way fraudulent, false, deceptive or misleading. (4-2-08)
- 04. General Conditions.** (7-1-93)
- a. Conditions deemed by investigators to be a menace to the public health will be brought to the attention of the board for consideration and immediate action. (7-1-93)
- b. These Standards of Conduct and Practice shall be conspicuously posted in every licensed denturist's place of business. (7-1-93)

**05. Patient Record.** A denturist must record, update and maintain documentation for each patient relevant to health history, clinical examinations and treatment, and financial data. Documentation must be written or computerized. Records shall be maintained in compliance with any applicable state and federal laws, rules and regulations, including the health insurance portability and accountability act (HIPAA), P.L. 104-191 (1996), and the health information technology for economic and clinical health act (HITECH), P.L. 111-115 (2009). Such records shall be accessible to other providers and to the patient in accordance with applicable laws, rules and regulations. Records must include but are not limited to the following: ( )

- a.** Patient data, including name, address, date and description of examination; ( )
- b.** Evidence of informed consent; ( )
- c.** Date and description of treatment, services rendered, and any complications; ( )
- d.** Health history as applicable; and ( )
- e.** Any other information deemed appropriate to patient care. ( )
- 06.** **Record Retention.** Patient documentation, written or archived electronically by computer, must be retained for a minimum of seven (7) years and available upon request by the Board. ( )

**451. -- 474. (RESERVED)**

**475. REGISTRATION STATEMENT (RULE 475).**

To enable the board to examine or inspect the place of business of any licensed dentist as referred to in Section 54-3314(5)(b), Idaho Code, the filing of an annual statement shall be required of all licensed dentists. (7-1-97)

**01. Statement.** Shall list the name and principal place of business of the dentist who is responsible for the practice of dentistry at that location. (7-1-97)

**02. Other Business Locations.** Any other business locations maintained by the principal dentist and all dentists employed at the business. (7-1-97)

**03. Date of Filing.** Shall be filed with the board ~~no later than August 15th of each year~~ annually or within ten (10) days of any change in either location, identity of principal dentist or dentist employees. ~~(7-1-97)~~ ( )

**04. Failure to Timely File.** Failure to timely file or update this statement will constitute grounds for discipline pursuant to Section 54-3314(a), Idaho Code. (7-1-97)

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.17.01 – RULES OF THE STATE BOARD OF ACUPUNCTURE**

**DOCKET NO. 24-1701-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-4705, Idaho Code.

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

There are no changes to the pending 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, page 639](#).

**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 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

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
--

**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 54-4705.

**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 500 is being deleted as the State Board of Acupuncture does not regulate acupuncture businesses, only the individual licensees.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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 DOCKET NO. 24-1701-1601**

~~**500. USE OF BUSINESS NAME OR TRADE NAME (RULE 500).**~~

~~*A business name or trade name used by a practitioner shall be registered with the Board within thirty (30) business days from commencement of using such name.*~~ ~~*(3-30-01)*~~

~~**501.**~~ -- 524. (RESERVED)



## **IDAPA 27 – BOARD OF PHARMACY**

### **27.01.01 – RULES OF THE IDAHO STATE BOARD OF PHARMACY**

**DOCKET NO. 27-0101-1601**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 37-2715, 37-2726(5) and 54-1717, Idaho Code.

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

The pending rule is adopted to update Board rules in conformance with statutory changes from the 2016 Idaho Legislature. Minor housekeeping edits have been made to the pending rules. In addition, the Board clarified that pharmacies have additional flexibility in listing an expiration date that coincides with the original manufacturer's expiration date, stemming from a recent expression of policy from the National Association of Boards of Pharmacy.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2016 Idaho Administrative Bulletin, [Vol. 16-9, pages 182-190](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

DATED this 31<sup>st</sup> day of October, 2016.

Alex Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**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 37-2715, 37-2726(5) and 54-1717, Idaho Code.

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

**Wednesday, October 26, 2016 – 1:00 pm (MDT)**

**Idaho State Capitol Building  
Room WW53  
514 West Jefferson  
Boise, ID**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

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

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

The 2016 Idaho Legislature passed several bills that necessitate conforming changes in Board rules. The specific bills are HB 338, HB 373, HB 374, HB 481, and SB 1322a. The rulemaking aims to update existing Board rules to conform to the newly passed legislation. Specifically, the rule updates will:

- Expand the venues at which emergency medication kits can be housed to include specialty infusion clinics.
- Allow Idaho's Regional Behavioral Health Clinics to donate and receive donated medications to dispense to medically indigent patients.
- Enable delegate access to the Prescription Monitoring Program.
- Exempt investigational drugs from the products that necessitate registration as a prescriber drug outlet.
- Allow prescription medications to be labeled in the name of an authorized entity.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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(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 49-50](#).

**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 Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

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 rule.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1601**

**011. DEFINITIONS AND ABBREVIATIONS (J -- R).**

**01. LTCF -- Long-Term Care Facility.** An institutional facility that provides extended health care to resident patients. (3-21-12)

**02. Mail Service Pharmacy.** A nonresident pharmacy that ships, mails, or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law. (7-1-13)

**03. MPJE.** Multistate Pharmacy Jurisprudence Exam. (3-21-12)

**04. MTM -- Medication Therapy Management.** A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)

**a.** Medication therapy review; (3-21-12)

**b.** Personal medication record; (3-21-12)

**c.** Medication-related action plan; (3-21-12)

**d.** Intervention or referral, or both; (3-21-12)

**e.** Documentation and follow-up. (3-21-12)

**05. NABP.** National Association of Boards of Pharmacy. (3-21-12)

**06. NAPLEX.** North American Pharmacists Licensure Examination. (3-21-12)

- 07. NDC.** National Drug Code. (3-21-12)
- 08. Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)
- 09. Outsourcing Drug Outlet.** A drug outlet that is registered by the United States Food and Drug Administration pursuant to 21 U.S.C. Section 353b and either registered or endorsed by the Board. (4-6-15)
- 10. Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)
- 11. Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Except as permitted pursuant to a collaborative practice agreement, nothing in these rules allows a pharmacist, beyond what is statutorily allowed, to engage in the unlicensed practice of medicine or to diagnose, prescribe, or conduct physical examinations. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (4-4-13)
- a.** Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)
  - b.** Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
  - c.** Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)
  - d.** Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)
  - e.** Documenting the care delivered; (3-21-12)
  - f.** Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
  - g.** Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
  - h.** Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)
  - i.** Preparing or providing information as part of a personal health record; (3-21-12)
  - j.** Identifying processes to improve continuity of care and patient outcomes; (3-21-12)
  - k.** Providing consultative drug-related intervention and referral services; (3-21-12)
  - l.** Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; (3-25-16)
  - m.** Ordering and interpreting laboratory tests; and (3-25-16)
  - n.** Other services as allowed by law. (3-21-12)

- 12. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy. (4-4-13)
- 13. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 14. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 15. PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)
- a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)
  - b.** Maintained in electronic media; and (3-21-12)
  - c.** Transmitted or maintained in any other form or medium. (3-21-12)
  - d.** PHI excludes individually identifiable health information in: (3-21-12)
    - i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)
    - ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)
    - iii.** Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)
- 16. PIC.** Pharmacist-in-charge. (3-21-12)
- 17. PMP.** Prescription Monitoring Program. (3-21-12)
- 18. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)
- 19. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)
- 20. Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples, patient assistance program drugs, or investigational drugs as permitted in Title 39, Chapter 93, Idaho Code. (3-21-12)( )
- 21. Purple Book.** The list of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations published by the FDA under the Public Health Service Act. (4-11-15)
- 22. Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)
- 23. Reconstitution.** The process of adding a diluent to a powdered medication to prepare a solution or suspension, according to the product's labeling or the manufacturer's instructions. (3-25-16)
- 24. Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)

**25. Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)

**26. Remote Office Location.** A secured area that is restricted to authorized personnel, adequately protects private health information, and shares a secure common electronic file or a private, encrypted connection with a pharmacy, from which a pharmacist who is contracted or employed by a central drug outlet performs centralized pharmacy services. (7-1-13)

**27. Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)

**28. Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)

**29. R.N.** Registered nurse. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. STANDARD PRESCRIPTION DRUG LABELING.**

Unless otherwise directed by these rules, a prescription drug must be dispensed in an appropriate container that bears the following information: (3-21-12)

**01. Dispenser Information.** The name, address, and telephone number of the dispenser (person or business). (3-21-12)

**02. Serial Number.** The serial number. (4-4-13)

**03. Date.** The date the prescription is filled. (3-21-12)

**04. Prescriber.** The name of the prescriber. (3-21-12)

**05. Name.** (4-11-15)

**a.** If a person, the name of the patient or other person authorized to possess a legend drug in accordance with Idaho Code; ~~(4-11-15)~~( )

**b.** If an animal, the name and species of the patient; or (4-11-15)

**c.** If a ~~school for epinephrine auto injectors pursuant to Section 33-5204,~~ facility or other entity is authorized to possess a legend drug in accordance with Idaho Code, the name of the ~~school~~ facility or entity. ~~(4-11-15)~~( )

**06. Drug Name and Strength.** Unless otherwise directed by the prescriber, the name and strength of the drug (the generic name and its manufacturer's name or the brand name). (3-21-12)

**07. Quantity.** The quantity of item dispensed. (3-21-12)

**08. Directions.** The directions for use. (3-21-12)

**09. Cautionary Information.** Cautionary information as required or deemed appropriate for proper use and patient safety. (3-21-12)

**10. Expiration.** An expiration date that is either: ( )

a. ~~the~~ the lesser of: ~~(3-21-12)~~( )

- ~~a.i.~~ One (1) year from the date of dispensing; (3-21-12)
  - ~~b.ii.~~ The manufacturer's original expiration date; (3-21-12)
  - ~~c.iii.~~ The appropriate expiration date for a reconstituted suspension or beyond use date for a compounded product; or (3-21-12)
  - ~~d.iv.~~ A shorter period if warranted. (3-21-12)
  - ~~b.~~ If dispensed in the original, unopened manufacturer packaging, the manufacturer's original expiration date. ( )
- 11. Refills.** The number of refills remaining, if any, or the last date through which the prescription is refillable. (4-11-15)
- 12. Warning.** The warning: "Caution: State or federal law, or both, prohibits the transfer of this drug to any person other than the patient for whom it was prescribed," except when dispensing to an animal, when a warning sufficient to convey "for veterinary use only" may be utilized. (4-11-15)
- 13. Identification.** The initials or other unique identifier of the dispensing pharmacist or dispensing prescriber. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. CONTROLLED SUBSTANCES: PMP.**

Specified data on controlled substances must be reported ~~weekly, or more often as required~~ by the ~~Board, end of the next business day~~ by all ~~pharmacies holding a DEA retail pharmacy registration~~ entities that dispense controlled substances in or into Idaho and prescribers that dispense controlled substances to humans. Data on controlled substance prescription drug samples does not need to be reported. ~~(4-4-13)~~( )

**01. Online Access to PMP.** Online access to the Board's PMP is limited to licensed prescribers and pharmacists, ~~or their delegates~~, for treatment purposes. To obtain online access, a prescriber or pharmacist, ~~or their delegate~~ must: ~~(3-21-12)~~( )

- a.** Complete and submit a registration application and a written agreement to adhere to the access restrictions and limitations established by law; (3-21-12)
- b.** Obtain Board approval for access; and (3-21-12)
- c.** Be issued a user account, login name, and password. (3-21-12)

**02. Use Outside Scope of Practice Prohibited.** Information obtained from the PMP must not be used for purposes outside the prescriber's or pharmacist's scope of professional practice. A delegate may not access the PMP outside of their supervisor's scope of professional practice. ~~(3-21-12)~~( )

**03. Profile Requests.** Authorized persons without online access may obtain a profile by completing the required form and submitting it to the Board office with proof of identification and other credentials required to confirm the requestor's authorized status pursuant to Section 37-2726, Idaho Code. (3-21-12)

**04. Suspension, Revocation, or Restriction of PMP Access.** Violation of this rule provides grounds for suspension, revocation, or restriction of the prescriber's, ~~or~~ pharmacist's, ~~or delegate's~~ authorization for online access to the PMP. ~~(3-21-12)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**265. LEGEND DRUG DONATION -- STANDARDS AND PROCEDURES.**

**01. Drug Donation Criteria.** A drug considered for donation to a qualifying charitable clinic or center must meet the following eligibility criteria or it must not be accepted for donation. (3-21-12)

- a. The drug name, strength, lot number, and expiration date must appear on the package or label. (3-21-12)
- b. The drug must be FDA-approved and: (3-21-12)
  - i. Be in the original unit dose packaging; or (3-21-12)
  - ii. Be an oral or parenteral drug in a sealed, single dose container approved by the FDA; or (3-21-12)
  - iii. Be a topical or inhalant drug in a sealed, unit-of-use container approved by the FDA; or (3-21-12)
  - iv. Be a parenteral drug in a sealed, multiple dose container approved by the FDA from which no doses have been withdrawn. (3-21-12)

v. Be a patient assistance program drug, which must be originally received by the qualified donor, and remain under the control and storage of the donor. ( )

c. The drug must not be the subject of a mandatory recall by a state or federal agency or of a voluntary recall by a drug wholesaler or manufacturer. (3-21-12)

d. The drug must not require storage temperatures other than normal room temperature as specified by the manufacturer or the USP. (3-21-12)

e. The drug must not be subject to an FDA-restricted drug distribution program such as and including, but not limited to, thalidomide and lenalidomide. (3-21-12)

**02. Donation Standards.** (3-21-12)

a. A pharmacist, physician, physician assistant, or an advanced practice professional nurse with prescriptive authority at the qualifying charitable clinic or center must be designated as responsible for defining the drugs included in the qualifying charitable clinic or center's formulary. (3-21-12)

b. ~~Donating nursing homes~~ A qualified donor may only donate drugs that appear on the formulary. ~~(3-21-12)~~ ( )

c. Prior to the delivery of donated drugs to the qualifying charitable clinic or center, a pharmacist, nurse, physician, or physician assistant from the ~~donating nursing home~~ qualified donor must sign and date a manifest that: ~~(3-21-12)~~ ( )

i. Attests that the donated drugs have been maintained in a secure and temperature-controlled environment that meets the drug manufacturers' recommendations and the USP standards; (3-21-12)

ii. Attests that the drugs have been continuously under the control of a healthcare professional and have never been in the custody of a patient or other individual; (3-21-12)

iii. Attests that the donated drugs are those qualified for donation by their inclusion in the qualifying charitable clinic or center's formulary; (3-21-12)

iv. Attests that the donation is fully compliant with these rules; (3-21-12)



- v. Attests that all PHI has been removed or redacted from the package; (3-21-12)
- vi. Lists the name of the ~~donating nursing home~~ qualified donor and the name of the receiving qualifying charitable clinic or center; and ~~(3-21-12)~~( )
- vii. Lists the name, strength, expiration date, lot number, and quantity of each prescription drug donated. (3-21-12)
- d. A copy of the manifest must be delivered to the qualifying charitable clinic or center with the donated drugs. (3-21-12)

**03. Receipt and Handling of Donated Drugs.** Donated drugs may be received and handled at a qualifying charitable clinic or center by a pharmacist, physician, physician assistant, advanced practice professional nurse with prescriptive authority, dentist, optometrist, or other authorized clinic or center personnel. (3-21-12)

**04. Verification of Received Drugs.** Qualified recipients must meet the following requirements, except in the instance in which a qualified recipient and a qualified donor are the same entity as permitted in Idaho Code: ~~(3-21-12)~~( )

- a. Each donated drug must be verified against the donation manifest by an individual authorized to receive the drugs. (3-21-12)
- b. If all PHI has not been removed by the donating entity, the information must be removed or redacted prior to dispensing. (3-21-12)
- c. Before donated drugs are placed with a qualifying charitable clinic or center's regular stock, a pharmacist, physician, physician assistant, or an advanced practice professional nurse with prescriptive authority must: (3-21-12)
  - i. Using a current drug identification book, a computer program, or an online service, verify that each donated drug unit meets the criteria specified by these rules; (3-21-12)
  - ii. Verify that the name and strength indicated on the label of each donated drug unit is correct; and (3-21-12)
  - iii. Determine for each donated drug that it is not adulterated or misbranded and is safe to dispense. (3-21-12)
- d. Donated drugs that do not meet the criteria of these rules must be destroyed and documentation of the destruction retained. (3-21-12)

**05. Storage of Donated Drugs.** (3-21-12)

- a. Donated drug storage must have proper environmental controls to ensure the integrity of the drug in accordance with the manufacturer's recommendations and USP standards. (3-21-12)
- b. Donated drugs may be commingled with the qualifying charitable clinic or center's regular stock of drugs only if the packaging on the donated drug has been labeled to indicate that the drug was obtained from a ~~nursing home~~ qualified donor and otherwise must be segregated. ~~(3-21-12)~~( )
- c. The drug storage area must be secured at all times and accessible only to persons authorized to handle donated drugs. (3-21-12)

**06. Dispensing Donated Drugs.** (3-21-12)

- a. Donated drugs that are expired, adulterated, misbranded, recalled, deteriorated, or not stored in

appropriate conditions must not be re-dispensed, must be destroyed, and their destruction must be appropriately documented. (3-21-12)

**b.** A pharmacist, physician, physician assistant, dentist, optometrist, or an advanced practice professional nurse with prescriptive authority at a qualifying charitable clinic or center who re-dispenses donated drugs to a patient must: (3-21-12)

**i.** Use an appropriate container; (3-21-12)

**ii.** Label the container as required by these rules except that the expiration date must be the same as on the original container; and (3-21-12)

**iii.** Initial the prescription label. (3-21-12)

**c.** A qualifying charitable clinic or center must retain records for each donated drug dispensed. (3-21-12)

**d.** Pharmacists, physicians, physician assistants, dentists, optometrists, and advanced practice professional nurses with prescriptive authority dispensing donated drugs must perform prospective drug review and provide patient counseling. (3-21-12)

**07. Miscellaneous.** (3-21-12)

**a.** The qualifying charitable clinic or center must maintain a list of the names of authorized clinic or center personnel, their individual duties, and a summary of their qualifications. (3-21-12)

**b.** A qualifying charitable clinic or center that receives donated drugs must adopt policies and procedures requiring and with sufficient detail to ensure that authorized clinic or center personnel will comply with applicable local, state, and federal laws. (3-21-12)

**c.** Drugs donated pursuant to these rules must not be sold, resold, offered for sale, traded, or transferred to another qualifying charitable clinic or center. (3-21-12)

**d.** Nothing in these rules precludes a qualifying charitable clinic or center from charging a dispensing fee. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**633. ~~INSTITUTIONAL FACILITY:~~ EMERGENCY KITS AND CRASH CARTS – GENERAL RULES.**

Emergency drugs prepared and packaged as required by these rules may be approved for inclusion in emergency kits or crash carts for use by personnel with authority granted by state or federal law to administer prescription drugs. (3-21-12)

**01. Storage and Security.** Emergency kits or crash carts must be sealed in a tamper-evident manner and stored in limited access areas to prevent unauthorized access and to ensure a proper environment for preservation of the drugs within them. (3-21-12)

**02. Exterior Kit Labeling.** The exterior of emergency kits must be clearly labeled as an emergency drug kit to be used only in emergencies. Additionally, an immediately retrievable list of the drugs contained therein must include: (3-21-12)

**a.** The name, strength, and quantity of each drug; (3-21-12)

**b.** The expiration date of the first expiring drug; and (3-21-12)

- c. The name, address, and telephone number of the supplying pharmacist, if applicable. (3-21-12)
- 03. Drug Removal.** Drugs must only be removed from emergency kits or crash carts by persons with authority granted by state or federal law to administer prescription drugs, pursuant to a valid drug order, or by a pharmacist. (3-21-12)
- 04. Notification of Authorized Use.** Whenever an emergency kit or crash cart is opened, the pharmacy must be notified and the kit or cart must restocked and resealed within a reasonable time. (3-21-12)
- 05. Notification of Unauthorized Use.** If an emergency kit or crash cart is opened in an unauthorized manner, the pharmacy ~~and other appropriate personnel of the institutional facility~~ must be promptly notified. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**635. INFUSION CLINIC, HOME HEALTH OR HOSPICE EMERGENCY KITS.**

A pharmacy may supply emergency kits ~~for~~ to an infusion clinic, or to state licensed or Medicare certified home health or hospice agencies, ~~or both~~, as follows: (3-21-12)( )

- 01. Storage and Security.** Emergency kits used by infusion clinics or home health or hospice agencies must be stored in locked areas suitable for preventing unauthorized access and for ensuring a proper environment for the preservation of the drugs, except that nurses licensed by the Idaho Board of Nursing and ~~employed by~~ affiliated with the supplying pharmacy, an infusion clinic, or a state-licensed or Medicare-certified home health or hospice agency~~ies~~, may carry emergency kits on their person while on duty and in the course and scope of their ~~employment~~ for affiliation with the pharmacy, clinic, or agency. While not on duty or working within the course and scope of their ~~employment~~ affiliation, the nurses must return the emergency kits to a locked storage area or supplying pharmacy. (3-21-12)( )
- 02. Prescription Drugs.** Prescription drugs included in a home health or hospice agency emergency kit must remain the property of, and under the responsibility of, the Idaho-registered supplying pharmacy. (3-21-12)
- 03. Controlled Substances.** Emergency kits supplied to infusion clinics or home health or hospice agencies must not include controlled substances. (3-21-12)( )

## **IDAPA 27 – BOARD OF PHARMACY**

### **27.01.01 – RULES OF THE IDAHO STATE BOARD OF PHARMACY**

**DOCKET NO. 27-0101-1602**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

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

The pending rule is adopted to update and modernize the Board's rules regarding telepharmacy. Minor housekeeping edits have been made to the pending rules. Section headings were updated from "retail" to "outpatient" to reflect the potential applications of telepharmacy in different venues. The registration of a remote dispensing site has been further streamlined.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2016 Idaho Administrative Bulletin, [Vol. 16-9, pages 191-197](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

DATED this 31<sup>st</sup> day of October, 2016.

Alex Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**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 54-1717, Idaho Code.

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

**Wednesday, October 26, 2016 – 1:00 pm (MDT)**

**Idaho State Capitol Building  
Room WW53  
514 West Jefferson  
Boise, ID**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

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

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

The Board needs to update and modernize its telepharmacy rules given advancements in technology. The proposed updates will also incorporate several waivers the Board has already granted to telepharmacy petitioners. The proposed updates will do the following:

- Allow streamlined registration of remote dispensing sites to applicants who meet certain criteria.
- Broaden the technology that may be used at a remote dispensing site beyond just an Automated Dispensing System.
- Remove the requirement that a remote dispensing site be co-located with a medical care facility.
- Remove the requirement that business contracts be filed with the Board.
- Update limits on the oversight of multiple remote dispensing sites.
- Remove duplicative language from the telepharmacy rules that are already specified in other existing Board rules.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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(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 49-50**, under Docket No. 27-0101-1601.

**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 Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

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 rule.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1602**

**071. REMOTE DISPENSING SITE REGISTRATION.**

**01. Remote Dispensing Site Registration.** A limited service outlet registration must be obtained by a remote dispensing site prior to participating in the practice of telepharmacy. (3-21-12)

**02. Supplemental Registration Application Requirements.** Prior to construction, an applicant for registration of a remote dispensing site must submit ~~and obtain Board approval of~~ a registration application. The application must include: ~~(3-21-12)( )~~

**a.** An attached description of the telepharmacy communication, electronic recordkeeping, and ~~ADS~~ electronic verification systems; ~~(3-21-12)( )~~

**b.** The operating specifications including location, ownership, current or proposed levels of pharmacist and technician staffing, and current or proposed number of supervised remote dispensing sites; ~~and~~ ~~(3-21-12)( )~~

**c.** An accurate scale drawing of the facility that illustrates: (3-21-12)

**i.** The layout and location of the systems; (3-21-12)

**ii.** The location of a patient counseling area; and (3-21-12)

**iii.** All access points to the electronic recordkeeping system and the ~~ADS~~ electronic verification system. ~~(3-21-12)( )~~

**iv.** A description of the proposed supervising pharmacy located in Idaho. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

710. ~~RETAIL-OUTPATIENT~~ TELEPHARMACY WITH REMOTE DISPENSING SITES.

Pharmacies And pharmacists commencing retail telepharmacy operations with a remote dispensing site ~~after August 23, 2011,~~ must comply with the following requirements: (3-21-12)( )

~~01. Telepharmacy Practice Sites and Settings. Prior to engaging in the practice of telepharmacy with a remote dispensing site, the supervising pharmacy must demonstrate that there is limited access to pharmacy services in the community in which the remote site is located. (3-21-12)~~

~~a. Information justifying the need for the remote dispensing site must be submitted with the initial registration application. (3-21-12)~~

~~b. The Board will consider the availability of pharmacists in the community, the population of the community to be served by the remote dispensing site, and the need for the service. (3-21-12)~~

~~c. The remote dispensing site must be located in a medical care facility operating in areas otherwise unable to obtain pharmaceutical care services on a timely basis. (3-21-12)~~

~~d. The Board will not approve a remote dispensing site if a retail pharmacy that dispenses prescriptions to outpatients is located within the same community as the proposed remote dispensing site. (3-21-12)~~

**021. Independent Entity Contract.** Unless jointly owned, a supervising pharmacy and a remote dispensing site must enter into a written contract that outlines the services to be provided and the responsibilities and accountability of each party in fulfilling the terms of the contract. (3-21-12)

~~a. A copy of the contract must be submitted to the Board with the initial registration application and at any time there is a substantial change in a contract term. (3-21-12)~~

~~b. The contract must be retained by the supervising pharmacy and made available to the Board upon request. (3-21-12)( )~~

**032. PIC Responsibility.** Unless an alternative PIC from the supervising pharmacy is specifically designated in writing, the PIC of the supervising pharmacy is also considered the responsible PIC for the remote dispensing site. (3-21-12)

**043. Remote Dispensing Site Staffing and Limitations.** The ~~Board may limit the number of PIC and pharmacist-on-duty are responsible for ensuring that the supervising pharmacy and~~ remote dispensing sites ~~under the are sufficiently staffed to allow for appropriate supervision and management of a single pharmacy that would not be reasonably expected to result in an unreasonable risk of harm to public health, safety, or welfare. (3-21-12)( )~~

~~a. A pharmacist may neither be designated nor function as the PIC of more than two (2) total locations at one time: ( )~~

~~b. The ratio of pharmacists to student pharmacists and technicians may not exceed one (1) pharmacist for every six (6) students and technicians in total at the supervising pharmacy and remote dispensing sites; and ( )~~

~~c. A designated pharmacist must be capable of being on site at the remote dispensing site within twelve (12) hours if an emergency arises. ( )~~

**054. Technician Staffing.** Unless staffed by a pharmacist, a remote dispensing site must be staffed by at least one (1) certified technician with at least two thousand (2,000) hours pharmacy technician experience ~~in Idaho and. All technicians must remain~~ under the supervision of a pharmacist at the supervising pharmacy at all times that the remote site is ~~open operational~~. Supervision does not require the pharmacist to be physically present at the remote dispensing site, but the pharmacist must supervise telepharmacy operations electronically from the supervising pharmacy. (3-24-16)( )

**065. Common Electronic Recordkeeping System.** The remote dispensing site and the supervising pharmacy must utilize a common electronic recordkeeping system that must be capable of the following: (3-21-12)

a. Electronic records must be available to, and accessible from, both the supervising pharmacy and the remote dispensing site; and (3-21-12)

b. Prescriptions dispensed at the remote dispensing site must be distinguishable from those dispensed from the supervising pharmacy. (3-21-12)

**076. Records Maintenance.** Controlled substance records must be maintained at the registered location unless specific approval is granted for central storage as permitted by, and in compliance with, federal law. (3-21-12)

**087. Video and Audio Communication Systems.** A supervising pharmacy of ~~an ADS system used in~~ a remote dispensing site must maintain a video and audio communication system that provides for effective communication between the supervising pharmacy and the remote dispensing site personnel and consumers. The system must provide an adequate number of views of the entire site, facilitate adequate pharmacist supervision and allow the appropriate exchanges of visual, verbal, and written communications for patient counseling and other matters involved in the lawful transaction or delivery of drugs. The remote dispensing site must retain a recording of ~~such video and audio~~ facility surveillance, excluding patient communications, for a minimum of ninety (90) days. ~~(4-11-15)~~( )

a. Adequate supervision by the pharmacist in this setting is maintaining constant visual supervision and auditory communication with the site and full supervisory control of the automated system ~~that, if applicable, and~~ must not be delegated to another person or entity. ~~(3-21-12)~~( )

b. Video monitors used for the proper identification and communication with persons receiving prescription drugs must be a minimum of twelve inches (12") wide, be of high definition and provided at both the pharmacy and the remote location for direct visual contact between the pharmacist and the patient or the patient's agent. ~~(3-21-12)~~( )

c. The video and audio communication system used to counsel and interact with each patient or patient's caregiver must be secure and HIPAA-compliant. ( )

d. Each component of the communication system must be in good working order. Unless a pharmacist is present onsite, the remote dispensing site must be, or remain, closed to the public if any component of the communication system is malfunctioning until system corrections or repairs are completed. ~~(3-21-12)~~( )

**098. Access and Operating Limitations.** Unless a pharmacist is present, a remote dispensing site must not be open or its employees allowed access to it during times the supervising pharmacy is closed. The security system must allow for tracking of entries into the remote dispensing site, and the PIC must periodically review the record of entries. (3-21-12)

**409. Delivery and Storage of Drugs.** If controlled substances are maintained or dispensed from the remote dispensing site, transfers of controlled substances from the supervising pharmacy to the remote dispensing site must comply with applicable state and federal requirements. (3-21-12)

a. Drugs must only be delivered to the remote dispensing site in a sealed container with a list identifying the drugs, drug strength, and quantities included in the container. Drugs must not be delivered to the remote dispensing site unless a technician or pharmacist is present to accept delivery and verify that the drugs sent were actually received. unless placed in a secure delivery area in accordance with state and federal law. The technician or pharmacist who receives and checks the order must verify receipt by signing and dating the list of drugs delivered. ~~(3-21-12)~~( )

b. If performed by a technician, a pharmacist at the supervising pharmacy must ensure, through use of the electronic audio and video communications systems or bar code technology, that a technician has accurately and correctly restocked drugs into the ADS system or cabinet. as applicable. ~~(3-21-12)~~( )



c. Drugs at the remote dispensing site must be stored in a manner to protect their identity, safety, security, and integrity and comply with the drug product storage requirements of these rules. (3-21-12)

d. Drugs, including previously filled prescriptions, not contained within an ADS system must be stored in a ~~locked cabinet within a~~ secured ~~area of a remote dispensing site~~ manner and access must be limited to pharmacists from the supervising pharmacy and the technicians authorized in writing by the PIC. ~~(3-21-12)~~(    )

~~11. **Wasting or Discarding of Drugs Prohibited.** Wasting or discarding of drugs resulting from the use of an ADS system in a remote dispensing site is prohibited.~~ (3-21-12)

~~12. **Returns Prohibited.** The technician at a remote dispensing site must not accept drugs returned by a patient or patient's agent.~~ (3-21-12)

~~130.~~ **Security.** A remote dispensing site must be equipped with adequate security. (4-11-15)

~~a.~~ At least while closed, a remote dispensing site must utilize an alarm or other comparable monitoring system to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. ~~The site must have a means of recording the time of entry and the identity of all persons who access the site, which must be retained for ninety (90) days.~~ Two (2) factoring credentialing is required for entry, which must include two (2) of the following: (4-11-15)(    )

~~i.a.~~ Something known (a knowledge factor); (4-11-15)

~~ii.b.~~ Something possessed (a hard token stored separately from the computer being accessed); and (4-11-15)

~~iii.c.~~ Something biometric (finger print, retinal scan, etc.); (4-11-15)

~~b. A remote dispensing site must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. All remote dispensing sites must meet the following security requirements:~~ (4-11-15)

~~i. Walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry.~~ (4-11-15)

~~ii. Solid core or metal doors are required.~~ (4-11-15)

~~iii. Doors and other access points must be constructed in a manner that the hinge hardware is tamper-proof when closed.~~ (4-11-15)

~~c. Access to the area of the remote dispensing site where prescription drugs are prepared, distributed, dispensed or stored must be limited to technicians and pharmacists. Any other persons requiring access to the remote dispensing site for legitimate business reasons may only be present in the secured area with the permission and under the supervision of a pharmacist, which may be satisfied via audio/video communication.~~ (4-11-15)

~~d. A remote dispensing site must be closed for business and secured during all times a pharmacist or technician is not present.~~ (4-11-15)

~~141.~~ **Patient Counseling.** A remote dispensing site must include an appropriate area for patient counseling. (3-21-12)

~~a. The area must be readily accessible to patients and must be designed to maintain the confidentiality and privacy of a patient's conversation with the pharmacist.~~ (3-21-12)

~~b.~~ Unless onsite, a pharmacist must use the HIPAA-compliant ~~the~~ video and audio communication system to counsel each patient or the patient's caregiver on new medications. (3-21-12)(    )

**152. Remote Dispensing Site Sign.** A remote dispensing site must display a sign, easily visible to the public, that informs patients that: (3-21-12)

- a. The location is a remote dispensing site providing telepharmacy services supervised by a pharmacist located in another pharmacy; (3-21-12)
- b. Identifies the city or township where the supervising pharmacy is located; and (3-21-12)
- c. Informs patients that a pharmacist is required to speak with the patient using audio and video communication systems each time a new medication is delivered ~~or~~ **and** if counseling is accepted **on a refill** at a remote dispensing site. (3-21-12)( )

**163. Pharmacist Inspection **and Inventories** of Remote Dispensing Site.** A pharmacist must complete and document: ( )

- a. ~~A~~ monthly in-person **self**-inspection of a remote dispensing site **using a form designated by the Board** and **such** inspection reports must be retained: (3-21-12)( )
- b. **A perpetual inventory must be kept for all Schedule II controlled substances; and** ( )
- c. **Three (3) controlled substances must be audited and documented quarterly by the pharmacist.** ( )

**174. Continuous Quality Improvement Program.** The PIC of the remote dispensing site must develop and implement a continuous quality improvement program. **This program must be made available to the Board upon request.** (4-11-15)( )

**711. ~~RETAIL~~ **OUTPATIENT** TELEPHARMACY WITH REMOTE DISPENSING SITES: PRESCRIPTION DRUG ORDERS.**

~~Prescription drug orders dispensed from a remote dispensing site must be previously filled by the supervising pharmacy or, unless a pharmacist is present, must only be filled on the premises of a remote dispensing site through the use of an ADS system and as follows:~~ (3-21-12)

**01. Pharmacist Verification of New Prescription Drug Order Information.** If a technician at the remote dispensing site enters original or new prescription drug order information into the automated pharmacy system, the pharmacist at the supervising pharmacy must, prior to approving, verify the information entered against a faxed, electronic, or video image of the original prescription. (3-21-12)

a. The technician may transmit the prescription drug order to the pharmacist by scanning it into the electronic recordkeeping system if the means of scanning, transmitting, or storing the image does not obscure the prescription information or render the prescription information illegible. (3-21-12)

b. Alternatively, the technician may make the original prescription available to the pharmacist by placing the prescription in an appropriate position to facilitate viewing of the original prescription via video communication systems between the remote dispensing site and the supervising pharmacy. Using the video communication, the pharmacist must verify the accuracy of the drug dispensed and must check the prescription label for accuracy, **unless checked in compliance with the accuracy checking technician procedures.** (3-21-12)( )

c. Except when prohibited by law for controlled substances, the technician may also transmit the prescription drug order to the supervising pharmacist by fax. (3-21-12)

~~d. A technician at a remote dispensing site must not receive oral prescription drug orders from a prescriber or a prescriber's agent. Oral prescription drug orders must be communicated directly to a pharmacist.~~ (3-21-12)

**02. Pharmacist and Technician Identification.** The initials or other unique identifiers of the pharmacist and technician involved in the dispensing must appear in the prescription record. (3-21-12)

**03. Pharmacist Verification of Drug Product and Label.** A pharmacist must compare, via video ~~or image-based~~ communication, the drug stock, the drug dispensed, and the label including the beyond use date. (3-21-12)( )

**04. Electronic Verification System.** The remote dispensing site must use an electronic verification system that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. The technician must electronically verify each prescription prepared for dispensing. (3-21-12)

**712. ~~RETAIL~~ OUTPATIENT TELEPHARMACY WITH REMOTE DISPENSING SITES: POLICIES AND PROCEDURES.**

A supervising pharmacy commencing telepharmacy operations with a remote dispensing site must adopt policies and procedures that address each of the following areas prior to engaging in the practice of telepharmacy. (3-21-12)

**01. Minimum Standards.** The establishment of minimum standards and practices necessary to ensure safety, accuracy, security, sanitation, recordkeeping, and patient confidentiality, including at least: (3-21-12)

**a.** Identification of personnel authorized to have access to drug storage and dispensing areas at the remote dispensing site and to receive drugs delivered to the remote dispensing site; ~~and~~ (3-21-12)( )

**b.** Procedures for the procurement of drugs and devices to the remote site and into any ADS systems used, ~~as applicable; and~~ (3-21-12)( )

~~**c.** The criteria for monthly in person pharmacist inspections of the remote dispensing site and appropriate documentation. (3-21-12)~~

**02. Training Standards.** The adoption of standards and training required for remote dispensing site technicians and pharmacists to ensure the competence and ability of each person that operates the ~~ADS~~ electronic verification system, electronic recordkeeping, and communication systems and a requirement for retention of training documentation. (3-21-12)( )

**03. Written Recovery Plan.** A written plan for recovery from an event that interrupts or prevents pharmacist supervision of, or otherwise compromises, the dispensing of drugs from the remote dispensing site that includes at least the following: (3-21-12)

**a.** Procedures for response while the communication or electronic recordkeeping systems are experiencing downtime or for an ~~ADS~~ electronic verification system malfunction; and (3-21-12)( )

**b.** Procedures for the maintenance and testing of the written plan for recovery. (3-21-12)

## **IDAPA 27 – BOARD OF PHARMACY**

### **27.01.01 – RULES OF THE IDAHO STATE BOARD OF PHARMACY**

**DOCKET NO. 27-0101-1603**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

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

The pending rule is adopted to update and modernize Board rules related to pharmacy technicians. Minor housekeeping edits have been made to the pending rules.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2016 Idaho Administrative Bulletin, **Vol. 16-9, pages 198-207**.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

DATED this 31<sup>st</sup> day of October, 2016.

Alex Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
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Boise, ID 83720-0067  
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Fax: (208) 334-3536

**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 54-1717, Idaho Code.

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

**Wednesday, October 26, 2016 – 1:00 pm (MDT)**

**Idaho State Capitol Building  
Room WW53  
514 West Jefferson  
Boise, ID**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

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

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

The Board needs to update and modernize its pharmacy technician rules given advancements in the education and training of technicians as well as advancements in the technology environment. The proposed updates seek to achieve the following, many of which are commonplace in other states:

- Allow pharmacists to delegate certain non-judgmental tasks to properly-trained, registered and certified pharmacy technicians under their supervision. Such delegated tasks include the ability to clarify missing elements on prescriptions, transfer prescriptions, administer medications, and take verbal prescriptions in certain circumstances.
- Expand verification technician programs beyond acute care hospitals.
- Enable remote data entry by certain pharmacy technicians.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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(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 49-50](#), under Docket No. 27-0101-1601.

**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 Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

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 rule.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1603**

**115. PRESCRIPTION DRUG ORDER: TRANSFERS.**

**01. Communicating Prescription Drug Order Transfers.** ~~Except prescription drug orders for Schedule II controlled substances, a~~ **Δ** pharmacist, **student pharmacist, or a certified technician** may transfer prescription drug order information for the purpose of filling or refilling if the information is communicated ~~from pharmacist to pharmacist~~ verbally, electronically, or via fax. (3-21-12)(    )

~~a. Prescription drug order information may also be communicated verbally by a student pharmacist, under the supervision of a pharmacist, to another pharmacist as long as one (1) of the parties involved in the communication is a pharmacist.~~ (3-21-12)

~~b. If transferring by fax transmission, the transfer document used must be signed by the transferring pharmacist.~~ (3-21-12)

**02. Documentation Required of the Transferring Pharmacy.** The ~~pharmacist~~ **qualified individual** transferring prescription drug order information must void or otherwise indicate that the original prescription drug order has been transferred and record the following information: (3-21-12)(    )

- a. The name of the transferring ~~pharmacist~~ **individual**; (3-21-12)(    )
- b. The name of the ~~pharmacist~~ **individual**; (3-21-12)(    )
- c. The name of the receiving pharmacy; (3-21-12)
- d. The date of the transfer; (3-21-12)
- e. The number of authorized refills available; and (3-21-12)
- f. If written for a controlled substance, the address and DEA registration number of the receiving pharmacy. (3-21-12)

**03. Documentation Required of the Receiving Pharmacy.** The ~~pharmacist~~ **qualified individual** receiving a transferred prescription drug order must document that the prescription drug order is a “transfer” and

record the following information:

~~(3-21-12)~~( )

- a. The name of the receiving ~~pharmacist~~ individual; ~~(3-21-12)~~( )
- b. The name of the transferring ~~pharmacist~~ individual; ~~(3-21-12)~~( )
- c. The name of the transferring pharmacy; (3-21-12)
- d. The date of issuance of the original prescription drug order; (3-21-12)
- e. The number of refills authorized by the original prescription drug order; (3-21-12)
- f. The number of authorized refills available; and (3-21-12)
- g. If written for a controlled substance: (3-21-12)
- i. The dates and locations of the original dispensing and previous refills; and (3-21-12)
- ii. The name, address, DEA registration number, and the serial number assigned to the prescription by the transferring pharmacy and any additional pharmacy that filled the prescription, if applicable. (4-4-13)

**04. Electronic Prescription Drug Order Transfers.** For electronic prescription drug orders that are transferred electronically, the transferring pharmacist must provide all of the information required to be recorded by the receiving pharmacist in addition to the original electronic prescription data. The receiving pharmacist must create an electronic record for the prescription drug order that includes the receiving pharmacist's name and all of the information transferred with the prescription. (3-21-12)

**05. Pharmacies Using Common Electronic Files.** Pharmacies may establish and use a common electronic file to maintain required dispensing information. (3-21-12)

a. Pharmacies using a common electronic file are not required to transfer prescription drug order information for dispensing purposes between or among other pharmacies sharing the common electronic file. (3-21-12)

b. Common electronic files must contain complete and accurate records of each prescription and refill dispensed. (3-21-12)

**06. Transferring Prescription Drug Orders for Controlled Substances.** A prescription drug order for a controlled substance listed in Schedules III, IV, or V may be transferred only from the pharmacy where it was originally filled and never from the pharmacy that received the transfer, except that pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization. (3-21-12)

**07. Transferring Prescription Drug Order Refills.** Prescription drug orders for non-controlled substances may be transferred more than one (1) time if there are refills remaining and other legal requirements are satisfied. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**321. TECHNICIAN: REMOTE DATA ENTRY SITES.**

A pharmacy located in Idaho may employ one (1) or more certified technicians under the authority of the PIC for the purpose of data entry in remote practice sites located in Idaho. ( )

**01. Technician Qualification.** All pharmacy technicians employed to work at a remote data entry practice site must be certified. ( )



**02. Prohibition on Inventory.** No drug inventory may be kept at any remote pharmacy technician data entry site and no dispensing may take place from a remote pharmacy technician data entry site. ( )

**03. Audit Trail Documentation.** All remote pharmacy technician data entry sites must have a procedure for identifying the certified technician and all other persons responsible for each aspect of the prescription preparation. ( )

**04. Remote Site Operations.** ( )

**a.** If the remote pharmacy data entry site is located within a home, there must be a designated area in which all of the technician's work will be performed. ( )

**b.** All computer equipment used at the remote technician data entry site must be able to establish a secure connection. Remote equipment must be configured so that patient information is not stored at the remote site electronically or in printed form. ( )

**c.** Computer equipment may be used for remote technician data entry. No other use of the equipment is allowed. ( )

**d.** Computer equipment must be locked or shut down whenever the technician is absent. ( )

**05. Security Requirements.** Remote pharmacy technician data entry sites must have adequate security to maintain patient confidentiality, and utilize equipment that prevents unauthorized storage or transfer of patient information. ( )

**06. PIC Responsibilities.** The PIC must: ( )

**a.** Provide a written policy and procedure document outlining the operation and security of each remote pharmacy technician data entry site location. The document must be available at each practice site; ( )

**b.** Keep a continuously updated list of all remote technician data entry sites to include address and phone number for each site. The record must be retained as part of the records of the licensed pharmacy; ( )

**c.** Ensure that the Idaho licensed pharmacy and each remote data entry technician has entered into a written agreement outlining all conditions and policies governing the operation of the remote site; ( )

**d.** Ensure that all computer equipment used at the remote site is in good working order, provides data protection, and complies with all security and HIPAA requirements; ( )

**e.** Establish a quality monitoring and improvement program for each remote data entry site; and ( )

**f.** Ensure adequate supervision of all remote technicians. The PIC is expected to ensure that the overall level of staffing does not result in, or would reasonably be expected to result in, an unreasonable risk of harm to public health, safety, or welfare. ( )

**07. Ratio.** A remote data entry technician does not count against the ratio of pharmacists to student pharmacists and technicians set forth in these rules. ( )

**08. Inspections.** All remote data entry sites are subject to unannounced inspection by a representative of the Board during established hours of operation. ( )

**324. -- 329. (RESERVED)**

**330. PHARMACIST: ADMINISTERED IMMUNIZATIONS.**



**01. Patient Eligibility.** A pharmacist may administer an immunization to a healthy patient without immunization contraindications pursuant to the latest recommendations by the CDC or other qualified government authority or to any patient pursuant to a prescription drug order issued by another prescriber. (3-21-12)

**02. Pharmacist Qualifications.** To qualify to administer immunizations, a pharmacist must first: (3-21-12)

**a.** Successfully complete a course by an ACPE-accredited provider or a comparable course that meets the standards for pediatric, adolescent, and adult immunization practices recommended and approved by the CDC's Advisory Committee on Immunization Practices and includes at least the following: ~~(3-21-12)~~ ( )

i. Basic immunology, vaccine, and immunization protection; (3-21-12)

ii. Diseases that may be prevented by vaccination or immunization; (3-21-12)

iii. Current recommended immunization schedules; (3-21-12)

iv. Vaccine and immunization storage and management; (3-21-12)

v. Informed consent; (3-21-12)

vi. Physiology and techniques for administration of immunizations; (3-21-12)

vii. Pre-immunization and post-immunization assessment and counseling; (3-21-12)

viii. Immunization reporting and records management; and (3-21-12)

ix. Identification response, documentation, and reporting of adverse events. (3-21-12)

**b.** Hold a current certification in basic life support for healthcare providers offered by the American Heart Association or a comparable Board-recognized certification program that includes cardiopulmonary resuscitation (CPR) and automated electronic defibrillator (AED) training and requires a hands-on skills assessment by an authorized instructor. (3-21-12)

~~**03. Maintaining Qualification.** To maintain qualification to administer immunizations, a pharmacist must annually complete a minimum of one (1) CPE hour of ACPE-approved CPE related to vaccines, immunizations, or their administration, which may also be applied to the general CPE requirements of these rules. (4-4-13)~~

~~**04. Student Pharmacist Delegation of Administration.** An immunizing pharmacist may not delegate authority to the technical task of administering an immunizations; however, to a student pharmacist or a certified technician under their supervision who has satisfied the qualifications may administer immunizations under the direct supervision of a qualified immunizing pharmacist. (3-21-12) ( )~~

**a.** Holds a current certification in basic life support for healthcare providers offered by the American Heart Association or a comparable Board-recognized certification program that includes cardiopulmonary resuscitation (CPR) and automated electronic defibrillator (AED) training and requires a hands-on skills assessment by an authorized instructor; and ( )

**b.** Has successfully completed a course on appropriate immunization administration techniques by an ACPE-accredited provider or a comparable course; or ( )

**c.** Has successfully completed the pharmacist qualifications specified under this rule. ( )

**05. Waste Disposal.** An immunizing pharmacist must properly dispose of used or contaminated supplies. (3-21-12)

**06. Required Reports.** An immunizing pharmacist must report: (3-21-12)

**a.** Adverse events to the healthcare provider identified by the patient, if any, and to the Vaccine Adverse Event Reporting System (VAERS); and (3-21-12)

**b.** Administration of immunizations to the Idaho Immunization Reminder Information System (IRIS), as required. (3-21-12)

**07. Required Resources.** A pharmacist must have a current copy of, or on-site access to, the CDC's Epidemiology and Prevention of Vaccine-Preventable Diseases. (3-21-12)

**08. Vaccine Information Statements.** A corresponding, current CDC-issued VIS must be provided to the patient or the patient's representative for each administered immunization. (3-21-12)

**09. Recordkeeping.** For each administered immunization, the following information must be collected and maintained in the patient profile: (3-21-12)

**a.** The patient's name, address, date of birth, and known allergies; (3-21-12)

**b.** The date of administration; (3-21-12)

**c.** The product name, manufacturer, dose, lot number, and expiration date of the vaccine; (3-21-12)

**d.** Documentation identifying the VIS provided; (3-21-12)

**e.** The site and route of administration and, if applicable, the dose in a series (e.g. one (1) of three (3)); (3-21-12)

**f.** The name of the patient's healthcare provider, if any; (3-21-12)

**g.** The name of the immunizing pharmacist and of the student pharmacist, if any; (3-21-12)

**h.** Adverse events observed or reported, if any, and documentation including at least the dates of any subsequent required reporting; and (3-21-12)

**i.** Completed informed consent forms. (3-21-12)

**10. Emergencies.** (3-21-12)

**a.** An immunizing pharmacist must maintain an immediately retrievable emergency kit sufficiently stocked to manage an acute allergic reaction to an immunization. At a minimum, the kit must include: (4-11-15)

i. Intramuscular diphenhydramine; (4-11-15)

ii. Oral diphenhydramine; (4-11-15)

iii. Appropriate needles and syringes for injection; (4-11-15)

iv. Alcohol; and (4-11-15)

v. At least one (1) of the following: (4-11-15)

(1) Auto-inject epinephrine; (4-11-15)

(2) A vial of epinephrine with a dosing chart based on average body mass by age for patients under the age of fourteen (14); or (4-11-15)

(3) An ampule of epinephrine with a dosing chart based on average body mass by age for patients

under the age of fourteen (14) and filter needles. (4-11-15)

b. An immunizing pharmacist may initiate and administer epinephrine, intramuscular diphenhydramine, or oral diphenhydramine to treat an acute allergic reaction to an immunization pursuant to guidelines issued by the American Pharmacy Association. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**360. STUDENT PHARMACIST: UTILIZATION AND PRACTICE LIMITATIONS.**

**01. Activities.** A student pharmacist may engage in the practice activities of a pharmacist if: (3-21-12)

a. The activity is not specifically required to be performed only by a pharmacist; (3-21-12)

b. The activity is commensurate with the education and skill of the student pharmacist and performed under the supervision of a pharmacist; (3-21-12)

c. Any activity of a compounding, dispensing, or interpretive nature is checked by a pharmacist; and (3-21-12)

d. Any recording activity that requires the initial or signature of a pharmacist is countersigned by a pharmacist unless performing activities in compliance with the accuracy checking technician procedures. ~~(3-21-12)~~ ( )

**02. Unlawful Acceptance of Assignment.** A student pharmacist must not accept assignment of, or perform, any task or function connected with pharmacy operations unless the student pharmacist is authorized by the assigning pharmacist and the task or function meets the criteria set forth in this rule. (3-21-12)

**03. Identification of Student Pharmacists.** (3-21-12)

a. Each student pharmacist must be identified by a clearly visible name badge designating the individual as a student pharmacist. The name badge must contain the individual's printed first name and the title of student pharmacist, pharmacist intern, pharmacist extern, or another title that conveys the same meaning. (3-21-12)

b. Student pharmacists must identify themselves as a student pharmacist, pharmacist intern, or pharmacist extern on any phone calls initiated or received while on duty. (3-21-12)

**361. -- 399. (RESERVED)**

**400. TECHNICIAN -- UTILIZATION AND PRACTICE LIMITATIONS.**

**01. Unlawful Acceptance of Assignment.** A technician must not accept assignment of, or perform, any task or function connected with pharmacy operations unless the technician is authorized by the assigning pharmacist and the task or function meets the criteria set forth in this rule. (3-21-12)

**02. Unlawful Performance.** A technician must not perform tasks or functions connected with pharmacy operations that: (3-21-12)

a. Are not routine; (3-21-12)

b. The technician is not adequately trained to perform; (3-21-12)

c. The technician has inadequate pharmacist supervision to perform; or (3-21-12)

d. Requires the use of a pharmacist's professional judgment. (3-21-12)

**03. Prohibited Tasks or Functions by a Technician.** ~~Unless excepted, a~~ technician must not do any of the following which, without limiting the scope of the term “professional judgment,” is a non-exclusive list of actions requiring a pharmacist’s professional judgment: ~~(3-21-12)( )~~

a. Receive a new verbal prescription drug order from a prescriber or other person authorized by law and, either manually or electronically, reduce the order to writing. ~~except if performed by a certified technician;~~ ~~(3-21-12)( )~~

b. Consult with the prescriber prior to filling if clarification of information is needed regarding a patient or the prescription drug order. ~~except if performed by a certified technician at the direction of a supervising pharmacist;~~ ~~(3-21-12)( )~~

c. Perform prospective drug review or interpret clinical data in a patient’s medication record (e.g., contraindications, drug interactions, etc.); (3-21-12)

d. Perform professional consultation with a prescriber, nurse, or other healthcare professional; (3-21-12)

e. Supervise the packaging of drugs and check the completed procedure and product, unless checked in compliance with the ~~verification~~ accuracy checking technician procedures ~~allowed in institutional facilities;~~ and ~~(3-21-12)( )~~

f. Provide patient consultation on a new or refilled prescription or on over-the-counter drugs or supplements; ~~and;~~ ~~(3-21-12)( )~~

~~g. Supervise the pharmacy operations activities of student pharmacists and technicians. (3-21-12)~~

**04. Technician Identification.** (3-21-12)

a. Each technician must be identified by a clearly visible name badge designating the individual as a technician. The name badge must contain the individual’s printed first name and the title of technician. (3-21-12)

b. Technicians must identify themselves as a technician on any phone calls initiated or received while on duty. (3-21-12)

**401. -- 409. (RESERVED)**

**410. ~~VERIFICATION~~ ACCURACY CHECKING TECHNICIAN PROGRAM.**

~~Only institutional pharmacies located within acute care hospitals~~ may utilize ~~a verification~~ an accuracy checking technician program according to these rules. ~~( )~~

**01. Program Scope.** ~~A verification~~ An accuracy checking technician program allows qualified technicians to ~~verify~~ perform accuracy checking of the work of other technicians and student pharmacists, or products filled by an ADS or other technology-assisted filling equipment, in the filling of ~~floor and ward stock and unit dose distribution systems for patients whose;~~ ~~( )~~

a. Drug orders or prescription drug orders that have previously ~~been~~ undergone prospective drug review ~~ed and approved~~ by a pharmacist; ~~or~~ ~~(3-21-12)( )~~

b. If in an institutional setting, floor and ward stock, and drugs that a practitioner controls the order, preparation, and administration of in accordance with state and federal law. ~~( )~~

**02. Written Program ~~Filing~~ Description.** Prior to initiating ~~a verification~~ an accuracy checking technician program, ~~an institutional~~ pharmacy must prepare a written program description that includes at least the following: ~~(3-21-12)( )~~

- a. The name of the pharmacist assigned as the coordinator of the ~~verification~~ accuracy checking technician program; (3-21-12)( )
- b. A description of the duties of the coordinator sufficient to ensure and demonstrate compliance by the ~~institutional~~ pharmacy with these ~~verification~~ accuracy checking technician program rules; (3-21-12)( )
- c. A description of the duties of technicians designated to perform the functions of verifying the work of other technicians; (3-21-12)
- d. Identification of the types of drugs ~~verification~~ accuracy checking technicians are authorized to verify; (3-21-12)( )
- e. A description of the specialized and advanced training that must be provided to each ~~verification~~ accuracy checking technician; and (3-21-12)( )
- f. A description of the monitoring and evaluation processes used by the ~~institutional~~ pharmacy to ensure the ongoing competency of each ~~verification~~ accuracy checking technician. (3-21-12)( )
- 023. Program Requirements.** Each ~~institutional~~ pharmacy utilizing ~~a verification~~ an accuracy checking technician program must comply with the following requirements: (3-21-12)( )
- a. A technician must neither be designated to perform, nor may the technician perform, ~~verification~~ accuracy checking functions without competently completing the required training. (3-21-12)( )
- b. ~~A verification~~ An accuracy checking technician may ~~not~~ verify ~~only manufacturer prepared or robotically prepared unit dose drugs identified in the written program description for floor or ward stock or unit dose distribution systems of pharmacist reviewed and approved~~ a compounded drug orders for hospital patients. If either the alteration of a unit dose or the combination of unit doses is required, a pharmacist must verify the resulting unit dose alteration or combination of unit doses any other drug excluded in the written program description. (3-21-12)( )
- c. The ~~institutional~~ pharmacy must conduct ~~ongoing~~ unannounced monitoring and evaluation of each ~~verification~~ accuracy checking technician at least quarterly for the first year and then annually thereafter to ensure the ongoing competency of the technician, and must remediate or remove from accuracy checking duty a technician who does not meet defined performance standards. (3-21-12)( )
- d. For each ~~verification~~ accuracy checking technician, ~~an institutional~~ pharmacy utilizing ~~a verification~~ an accuracy checking technician program must maintain records containing: (3-21-12)( )
- i. The date the accuracy checking technician was designated; (3-21-12)( )
- ii. The date the accuracy checking technician completed the required training; (3-21-12)( )
- iii. The dates and results of each competency evaluation; and (3-21-12)
- iv. The dates of, and reasons for, any suspension or revocation of the technician's designation or other disciplinary action against the ~~verification~~ accuracy checking technician connected with the performance of the technician's duties in the ~~verification~~ accuracy checking technician program. (3-21-12)( )
- e. While on duty, each ~~verification~~ accuracy checking technician must wear identification that includes the title, "~~verification~~ Accuracy Checking Technician." (3-21-12)( )
- f. The duties of the ~~verification~~ accuracy checking technician program coordinator must include the supervision of ~~verification~~ accuracy checking technicians to ensure their duties are performed competently in a manner that protects patient safety. (3-21-12)( )
- g. Retail pharmacies implementing an accuracy checking technician program must use an electronic**

verification system that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. Each prescription prepared for dispensing under an accuracy checking program must be electronically verified and electronically documented. ( )

**04. Student Pharmacist Participation.** Student pharmacists may participate fully in an accuracy checking technician program with the same limitations and requirements as accuracy checking technicians. ( )

**05. Board Review.** The written program description and records required under this section must be made available to the Board upon request. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**607. PHARMACY STAFFING AND RATIO.**

**01. Staffing.** A pharmacy must be staffed sufficiently to allow for appropriate supervision, to otherwise operate in compliance with the law, and if applicable, to remain open during the hours posted as open to the public for business. (3-21-12)

**02. Ratio.** Unless otherwise provided by these rules, ~~7~~<sup>7</sup>the ratio of pharmacists to student pharmacists and technicians may not exceed one (1) pharmacist for every six (6) student pharmacists and technicians in total in any practice setting. A pharmacist must not operate a pharmacy, allow the operation of a pharmacy, or be required to operate a pharmacy with a ratio that results in, or would reasonably be expected to result in, an unreasonable risk of harm to public health, safety, or welfare. ~~(3-21-12)~~( )

## IDAPA 27 – BOARD OF PHARMACY

### 27.01.01 – RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1604

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

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

The pending rule is adopted to update and modernize Board rules related to pharmacy practice. The Board capped the number of exam attempts for pharmacist licensure candidates. The Board also vacated the rule related to medication errors with fatal outcomes.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2016 Idaho Administrative Bulletin, [Vol. 16-9, pages 208-220](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

DATED this 31<sup>st</sup> day of October, 2016.

Alex Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**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 54-1717, Idaho Code.

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

**Wednesday, October 26, 2016 – 1:00 pm (MDT)**

**Idaho State Capitol Building  
Room WW53  
514 W. Jefferson  
Boise, ID**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

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

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

The Board needs to update several rules given advancements in technology and changes in pharmacy practice. In addition, the Board intends to clarify several rules based on recent inspections and Board administrative hearings. The proposed updates will do the following:

- Update the security requirements that pharmacies must follow.
- Clarify the provisions for legal medication returns for institutional pharmacies and to authorize collection for destruction.
- Enable broader emergency room dispensing in conformance with a U.S. Supreme Court decision.
- Enable pharmacists to better coordinate refills of medications in order to improve patient medication adherence.
- Require the timely notification of medication errors that result in fatal outcomes.
- Update requirements for licensure applicants.
- Clarify prepackaged product labeling requirements.
- Update the list of required pharmacy references.
- Update pharmacy delivery restrictions.

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



**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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(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 49-50**, under Docket No. 27-0101-1601.

**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 Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

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 rule.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1604**

**011. DEFINITIONS AND ABBREVIATIONS (J -- R).**

**01. LTCF -- Long-Term Care Facility.** An institutional facility that provides extended health care to resident patients. (3-21-12)

**02. Mail Service Pharmacy.** A nonresident pharmacy that ships, mails, or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law. (7-1-13)

**03. Maintenance Drug.** A drug intended for the treatment of a health condition or disease that is persistent or otherwise expected to be long lasting in its effects. ( )

**04. Medication Synchronization Program.** An opt-in program provided by a pharmacy for aligning the refill dates of a patient's prescription drugs so that drugs that are refilled at the same frequency may be refilled concurrently. ( )

**~~03~~5. MPJE.** Multistate Pharmacy Jurisprudence Exam. (3-21-12)

**~~04~~6. MTM -- Medication Therapy Management.** A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)

**a.** Medication therapy review; (3-21-12)

**b.** Personal medication record; (3-21-12)

- c. Medication-related action plan; (3-21-12)
- d. Intervention or referral, or both; (3-21-12)
- e. Documentation and follow-up. (3-21-12)
- ~~057.~~ **NABP.** National Association of Boards of Pharmacy. (3-21-12)
- ~~068.~~ **NAPLEX.** North American Pharmacists Licensure Examination. (3-21-12)
- ~~079.~~ **NDC.** National Drug Code. (3-21-12)
- ~~0810.~~ **Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)
- ~~0911.~~ **Outsourcing Drug Outlet.** A drug outlet that is registered by the United States Food and Drug Administration pursuant to 21 U.S.C. Section 353b and either registered or endorsed by the Board. (4-6-15)
- ~~102.~~ **Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)
- ~~143.~~ **Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Except as permitted pursuant to a collaborative practice agreement, nothing in these rules allows a pharmacist, beyond what is statutorily allowed, to engage in the unlicensed practice of medicine or to diagnose, prescribe, or conduct physical examinations. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (4-4-13)
  - a. Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)
  - b. Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
  - c. Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)
  - d. Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)
  - e. Documenting the care delivered; (3-21-12)
  - f. Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
  - g. Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
  - h. Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)
  - i. Preparing or providing information as part of a personal health record; (3-21-12)
  - j. Identifying processes to improve continuity of care and patient outcomes; (3-21-12)

- k.** Providing consultative drug-related intervention and referral services; (3-21-12)
- l.** Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; (3-25-16)
- m.** Ordering and interpreting laboratory tests; and (3-25-16)
- n.** Other services as allowed by law. (3-21-12)
- 124. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy. (4-4-13)
- 135. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 146. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 157. PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)

  - a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)
  - b.** Maintained in electronic media; and (3-21-12)
  - c.** Transmitted or maintained in any other form or medium. (3-21-12)
  - d.** PHI excludes individually identifiable health information in: (3-21-12)

    - i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)
    - ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)
    - iii.** Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)
- 168. PIC.** Pharmacist-in-charge. (3-21-12)
- 179. PMP.** Prescription Monitoring Program. (3-21-12)
- 1820. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)
- 1921. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)
- 202. Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. (3-21-12)
- 243. Purple Book.** The list of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations published by the FDA under the Public Health Service Act. (4-11-15)

**224. Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)

**235. Reconstitution.** The process of adding a diluent to a powdered medication to prepare a solution or suspension, according to the product's labeling or the manufacturer's instructions. (3-25-16)

**246. Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)

**257. Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)

**268. Remote Office Location.** A secured area that is restricted to authorized personnel, adequately protects private health information, and shares a secure common electronic file or a private, encrypted connection with a pharmacy, from which a pharmacist who is contracted or employed by a central drug outlet performs centralized pharmacy services. (7-1-13)

**279. Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)

**2830. Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)

**2931. R.N.** Registered nurse. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**032. PHARMACIST LICENSURE EXAMINATIONS.**

Qualified applicants may sit for and to obtain licensure must pass the NAPLEX and the MPJE in accordance with NABP standards. A candidate who fails the NAPLEX three (3) times must complete at least thirty (30) hours of continuing education accredited by an ACPE-accredited provider prior to being eligible to sit for each subsequent reexamination. Candidates are limited to five (5) total attempts to pass the NAPLEX and MPJE. ~~(3-21-12)~~ ( )

**033. PHARMACIST LICENSURE BY RECIPROCITY.**

An applicant for pharmacist licensure by reciprocity must satisfy the requirements of Section 54-1723, Idaho Code, and this rule to obtain an Idaho license. ~~The Board will issue a reciprocal license only to a~~ An applicant whose pharmacist license is in good standing is currently restricted by a licensing entity in another state at the time of application and issuance of the Idaho license must appear before the Board to petition for licensure by reciprocity. ~~(3-21-12)~~ ( )

**01. Transfer Application.** The applicant must submit a preliminary application for licensure transfer through NABP. (3-21-12)

**02. MPJE.** The applicant must pass the Idaho-based MPJE. (3-21-12)

**03. Intern Hours.** An applicant not actively engaged in the practice of pharmacy during the year preceding the date of application may also be required to complete up to forty (40) intern hours for each year away from the practice of pharmacy. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**116. PRESCRIPTION DRUG ORDER: REFILLS.**

**01. Refill Authorization.** A prescription drug order may be refilled when permitted by state and federal laws and only as specifically authorized by the prescriber. (3-21-12)

**a.** A pharmacist, utilizing his best professional judgment, may dispense a prescription drug that is not a controlled substance up to the total amount authorized by the prescriber including refills. (3-21-12)

**b.** Refills exceeding those authorized by the prescriber on the original prescription drug order may only be authorized through issuance of a new and separate prescription drug order. except that upon patient request, a pharmacist may extend a maintenance drug, other than a controlled drug, compounded drug, or biological product, for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program. (3-21-12)( )

**02. Emergency Prescription Refills.** A pharmacist may refill a prescription for a patient when: (3-25-16)

**a.** The prescriber is not available for authorization if, in the professional judgment of the pharmacist, a situation exists that threatens the health or safety of the patient should the prescription not be refilled. Only sufficient medication may be provided, consistent with the dosage instructions, to maintain the prescribed treatment until, at the earliest possible opportunity, the issuing or an alternative prescriber is contacted for further renewal instructions. (3-25-16)

**b.** Upon the declaration of a national, state, or local emergency by the President of the United States, the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency, a pharmacist may dispense a refill of a prescription drug to an affected patient, not to exceed a thirty (30)-day supply if, in the pharmacist's professional judgment, the prescription drug is essential to the patient's health or continuation of therapy. (3-25-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**142. PARENTERAL ADMIXTURE LABELING.**

If one or more drugs are added to a parenteral admixture the admixture's container must include a distinctive, supplementary label with at least the following information: (3-21-12)

**01. Ingredient Information.** The name, amount, strength, and if applicable, the concentration of the drug additive and the base solution or diluent; (3-21-12)

**02. Date and Time.** The date and time of the addition, or alternatively, the beyond use date and time; (3-21-12)( )

**03. Identification.** The initials or other unique identifier of the pharmacist or preparing prescriber responsible for its accuracy; (4-4-13)

**04. Prescribed Administration Regimen.** The rate or appropriate route of administration or both, as applicable; and (3-21-12)

**05. Special Instructions.** Any special handling, storage, or device-specific instructions. (3-21-12)

**143. PREPACKAGED PRODUCT LABELING.**

The containers of prepackaged drugs prepared for ADS systems or other authorized uses must include a label with at least the following information: (3-21-12)

**01. Drug Name and Strength.** The name and strength of the drug; (3-21-12)

**02. Expiration Date.** An expiration date that is the lesser of: (3-21-12)

- a. The manufacturer's original expiration date; (3-21-12)
  - b. One (1) year from the date the drug is prepackaged; or (3-21-12)
  - c. A shorter period if warranted (A prepackaged drug returned unopened from an institutional facility and again prepackaged must be labeled with the expiration date used for the initial prepackaging.); (3-21-12)
- 03. Conditional Information.** If not maintained in ~~the a separate~~ records ~~of the pharmacy~~, the manufacturer's name and lot number and the identity of the pharmacist or provider responsible for the prepackaging. ~~(3-21-12)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. CONTROLLED SUBSTANCES: POSITIVE IDENTIFICATION REQUIRED.**

A potential recipient of a controlled substance must first be positively identified or the controlled substance must not be dispensed. (3-21-12)

**01. Positive Identification Presumed.** Positive identification is presumed and presentation of identification is not required if dispensing directly to the patient and if: (3-21-12)

- a. The controlled substance will be paid for, in whole or in part, by an insurer; or (3-21-12)
- b. The patient is being treated at an institutional facility or is housed in a correctional facility. (4-4-13)
- c. The filled prescription is delivered to the patient ~~s residence~~ or patient's provider either by mail, common carrier, or an employee of the pharmacy. ~~(4-4-13)~~ ( )

**02. Personal Identification.** Presentation of identification is also not required if the individual receiving the controlled substance is personally and positively known by a pharmacy or prescriber drug outlet staff member who is present and identifies the individual and the personal identification is documented by recording: (3-21-12)

- a. The recipient's name (if other than the patient); (3-21-12)
- b. A notation indicating that the recipient was known to the staff member; and (3-21-12)
- c. The identity of the staff member making the personal identification. (3-21-12)

**03. Acceptable Identification.** The identification presented must include an unaltered photograph and signature and acceptable forms include: (3-20-14)

- a. A valid U.S. state or U.S. military driver's license or identification card; (3-20-14)
- b. A Western Hemisphere Travel Initiative (WHTI) compliant document (i.e., Enhanced Driver's License (EDL) or Nexus Air Card); (3-20-14)
- c. A valid passport; and (3-20-14)
- d. A U.S. passport card (PASS Card). (3-20-14)

**04. Identification Documentation.** Documentation of the recipient's identification must be permanently linked to the record of the dispensed controlled substance and must include: (3-21-12)

- a. A copy of the identification presented; or (3-21-12)

- b. A record that includes: (3-21-12)
  - i. The recipient's name; (3-21-12)
  - ii. A notation of the type of identification presented; (3-21-12)
  - iii. The government entity that issued the identification; and (3-20-14)
  - iv. The unique identification number. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**262. RESTRICTED RETURN OF DRUGS OR DEVICES.**

Once removed from the premises from which it was dispensed, a drug or prescription device must only be accepted for return or destruction under the conditions permitted by this rule or pursuant to the Legend Drug Donation Act and rules. ~~(3-21-12)~~( )

**01. Qualifying Returns.** ~~Unless dispensed in any manner inconsistent with the prescriber's instructions and returned for quarantine for destruction purposes only, a drug or prescription device that has been received from or delivered to the patient or the patient's representative is ineligible for return.~~ Drugs or devices that may qualify for return include: ~~(3-21-12)~~( )

**a.** Those that were dispensed in a manner inconsistent with the prescriber's instructions may be returned for quarantine and destruction purposes only. ( )

**b.** Those intended for inpatients of an institutional facility that have been maintained in the custody and control of the institutional facility or dispensing pharmacy; and (3-21-12)

**c.** That are liquid or in unit dose or unit-of-use packaging and, if a controlled substance, returned from a hospital daily delivery system. A hospital daily delivery system means a system under which a pharmacy dispenses no more than a twenty-four (24) hour supply for a drug order, or up to a seventy-two (72) hour supply for a drug order if warranted for good patient care; and ~~(3-21-12)~~( )

**d.** Those for which the following conditions are satisfied: (3-21-12)

- i. The drug was delivered by the dispensing pharmacy directly to the institutional facility or its authorized agent and subsequently stored in a suitable drug storage area that is inaccessible to patients; (3-21-12)
- ii. The drug is returned in an unopened manufacturer-sealed container or with other tamper-evident packaging intact; (3-21-12)
- iii. In the professional judgment of the pharmacist, the safety and efficacy of the drug has not been compromised; and (3-21-12)
- iv. A system is in place to track the restocked drug for purposes of a recall. (3-21-12)

**02. Marking Ineligible Returns.** Drugs or devices otherwise eligible for return that are or will become ineligible for any reason must be clearly marked "Not Eligible for Return" prior to leaving the institutional facility or upon discovery and before storing in an area with other eligible returns. (3-21-12)

**03. Consulting Pharmacy and PIC Responsibilities.** The pharmacy and its PIC are responsible for: (4-4-13)

- a. Consulting with an institutional facility from which returns will be accepted; (4-4-13)



b. Ensuring that the institutional facility has an employee trained and knowledgeable in the proper storage, use, and administration of drugs and devices; (4-4-13)

c. Reviewing, approving, and enforcing written protocols that will ensure compliance with the conditions necessary to allow returns; and (4-4-13)

d. Storing a copy of the protocols, as well as the written approval thereof, in an immediately retrievable fashion. (4-4-13)

04. Collection for Destruction. A pharmacy registered with the DEA as a collector may collect controlled and non-controlled drugs for destruction in accordance with applicable federal law. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. PIC: QUALIFICATIONS.**

A pharmacist may neither be designated nor function as the PIC of ~~a more than two (2) pharmacies unless the designee spends a substantial part of the designee's working time each month at the pharmacy in which designated as the PIC.~~ (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**503. PRESCRIPTION DELIVERY RESTRICTIONS.**

A pharmacist must not participate in any arrangement or agreement whereby filled prescriptions may be left at, picked up from, accepted by, or delivered to any place of business not registered as a pharmacy except that a pharmacist or a pharmacy, by means of its agent, may deliver filled prescriptions to the following: ( )

01. Patient. To the patient; or the patient's residence, the hospital or other institutional facility in which the patient is convalescing, the correctional facility in which a patient is housed, or if a non-controlled substance; or ( )

02. Provider. To the patient's licensed or registered healthcare provider, except if a controlled substance not intended for direct administration. (4-4-13)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**603. PHARMACY REFERENCES.**

Required pharmacy references include the latest hard copy or electronic editions and supplements of the following: (3-21-12)

01. Pharmacy Laws and Rules. Idaho Pharmacy Laws and Rules. (3-21-12)

02. DEA Manual. DEA Pharmacist's Manual. ( )

023. Current Pharmacy References. One (1) of the following current pharmacy references: (3-21-12)

~~a. Facts and Comparisons;~~ (3-21-12)

~~b. Clinical Pharmacology;~~ (3-21-12)

~~c. Micromedex; or~~ (3-21-12)



- ~~d.~~ ~~Lexicomp.~~ (3-21-12)
- ~~03.~~ ~~Additional Current Pharmacy Reference. One (1) additional~~ At least two (2) current pharmacy references s relevant to the practice setting. (3-21-12)(    )

(BREAK IN CONTINUITY OF SECTIONS)

605. PHARMACY SECURITY.

A pharmacy must be constructed and equipped with adequate security to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. Failure to provide effective controls to prevent unauthorized access, acquisition, or use constitutes grounds for discipline to the PIC and the facility. New construction or a remodeled pharmacy must meet the following minimum security requirements: (4-11-15)(    )

01. **Alarm.** At least while closed an alarm or other comparable monitoring system is required. (4-11-15)
- ~~02.~~ ~~Walls. Pharmacy walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry.~~ (4-11-15)
- ~~03.~~ ~~Doors. Solid core or metal doors are required.~~ (4-11-15)
- ~~04.~~ ~~Hinges and Locks. Doors and other access points must be constructed in a manner that the hinge hardware is tamper proof when closed.~~ (4-11-15)
- ~~05.~~ **Differential Hours.** When ~~closed for~~ located in a larger business establishment, a pharmacy that is closed must be: (4-11-15)
- ~~a.~~ ~~Completely enclosed in a manner sufficient to provide adequate security; or.~~ (4-11-15)
- ~~b.~~ ~~Located within a larger business establishment that is also closed. In such cases, the establishment must meet these minimum security requirements, and no person is allowed entry to the establishment unless a pharmacist is present.~~ (4-11-15)
06. **Drop Box.** If used, a “drop box” or “mail slot” allowing delivery of prescription drug orders to the pharmacy during hours closed must be appropriately secured against theft, and the pharmacy hours must be prominently visible to the person depositing the prescription drug order. Prescriptions must not be accepted for delivery to the pharmacy or for depositing in the drop box by non-pharmacy employees of a retail establishment. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

637. INSTITUTIONAL FACILITY: EMERGENCY OUTPATIENT DRUG DELIVERY BY HOSPITAL EMERGENCY ROOMS.

Drugs may be delivered by an RN to outpatients being treated in a hospital emergency room as follows: (4-4-13)

01. **Prerequisites:** (4-4-13)
- a. In the presence of a prescriber, acting as an agent of that prescriber, or outside the presence of a prescriber, when there is no prescriber present in the hospital in accordance with applicable state and federal law; (4-4-13)
- b. Pursuant to a valid drug order issued by a prescriber; and (4-4-13)(    )

~~e.~~ *When no pharmacist is on duty in the community; and* (4-4-13)

~~d.c.~~ When drugs are stored and accessed in accordance with applicable laws and rules. (4-4-13)

**02. Limitations.** ~~No more than one (1) prepackaged container of the same drug may be delivered unless more than one (1) package is required to sustain the patient until the first available pharmacist is on duty in the community except that the full course of therapy for anti-infective medications may be provided~~ Dispensing must be in limited quantities and for a reasonable time duration as a continuation of or supplemental to treatment that is administered in the emergency room. (3-21-12)( )

**03. Documentation.** Delivery must be documented as required by these rules for institutional facility emergency drug access. (4-4-13)

**04. Labeling.** The institutional pharmacy must prepackage and affix a label to the container with the information required by the standard prescription drug labeling rules, except that blank spaces may be left for the names of the patient and prescriber and directions for use. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**650. INSTITUTIONAL FACILITY: CENTRALIZED PHARMACY SERVICES.**

In addition to the rules for centralized pharmacy services, an institutional facility that centralizes pharmacy services must be in compliance with the following rules: (7-1-13)

**01. Limited Purpose.** Centralized pharmacy services are for the limited purpose of ensuring that drugs or devices are attainable to meet the immediate needs of patients and residents of the institutional facility or if the originating pharmacy cannot provide services for the institutional facility on an ongoing basis Centralized product distribution is permissible if performed by a centralized pharmacy under common ownership with the institutional facility, and if such distribution is within the limits of other applicable state and federal laws; (7-1-13)( )

**02. Policies and Procedures.** An institutional pharmacy and its contracted central drug outlet or central pharmacist that provides centralized pharmacy services must adopt policies and procedures and retain documentation that evidences at least the following as applicable: (7-1-13)( )

a. A copy of the contract if required by these rules; (7-1-13)

b. Identification of the directors or PICs; (7-1-13)

c. The protocol for ensuring that the central drug outlet maintains sufficient Board licensed or registered pharmacists to meet the centralized pharmacy services needs of the institutional facility; (7-1-13)

d. The protocol for accessing prescription drugs in the institutional pharmacy contracting with the central drug outlet or central pharmacist and for maintaining the security of the drugs; (7-1-13)

e. Essential information utilized by the institutional facility, such as its formulary, standard drip concentrations, standard medication administration times, standardized or protocol orders, pharmacokinetic dosing policies, and renal dosing policies, as well as protocols for ensuring timely and complete communication of changes to the information; and (7-1-13)

f. The protocol for the central drug outlet or central pharmacist to perform a review of the patient's profile, including but not limited to performing a prospective drug review. (7-1-13)

## IDAPA 27 – BOARD OF PHARMACY

### 27.01.01 – RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1606

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

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

There are no changes to the pending 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 678-680](#).

**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 Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

DATED this 4<sup>th</sup> day of November, 2016.

Alex Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

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 54-1717, Idaho Code.

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

**Wednesday, October 26, 2016 – 1 p.m. (MDT)**

**Idaho State Capital Building, Room WW53  
514 W. Jefferson  
Boise, Idaho**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

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

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

On July 22, 2016, S. 524, the Comprehensive Addiction and Recovery Act (CARA) of 2016, took effect. One provision of this Act is a loosening of restrictions on the partial filling of Schedule II controlled substance prescriptions. The federal law change would allow a patient to receive fewer Schedule II controlled substance pills than written by a prescriber, while not forfeiting the balance if picked up within a certain timeframe. This federal law change is intended to reduce the amount of Schedule II controlled substances dispensed, and reduce the number of unused pills that remain in Idaho households and need discarded. This proposed rule would harmonize Idaho law with the new federal law.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any 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

There is no anticipated fiscal impact as a result of these rule changes, though it could conceivably reduce healthcare costs if patients fill fewer pills than prescribed.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. The Board's negotiated rulemaking session was held on August 3, 2016. This proposed rule change stems from a change in federal law that was signed by President Obama on July 22, 2016. Thus, the timing of the federal law change and specifically when the Board was notified, did not lend itself to adding this to the negotiated rulemaking meeting. A draft has been circulated to known stakeholders on this topic, and an open meeting will be held on October 26, 2016 at which the Board will consider both written and verbal comments on this proposed rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at [alex.adams@bop.idaho.gov](mailto:alex.adams@bop.idaho.gov).

DATED this 25th day of August, 2016.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1606**

**114. PRESCRIPTION DRUG ORDER: PARTIAL FILLING.**

**01. Partial Filling of Schedule II Prescriptions.** A Schedule II controlled substance prescription drug order may be partially filled and dispensed ~~if the pharmacist is unable to supply~~ within the ~~full quantity ordered~~ limits of federal law. (3-21-12)(    )

~~a. The remaining portion of the prescription drug order may be filled if within seventy-two (72) hours of the first partial filling. If the remaining portion is not or cannot be filled within seventy-two (72) hours, the pharmacist must notify the prescriber.~~ (3-21-12)

~~b. Additional quantities must not be dispensed beyond seventy-two (72) hours without a new prescription drug order.~~ (3-21-12)

**02. Partial Filling of Schedule II Prescriptions for LTCF or Terminally Ill Patients.** A Schedule II controlled substance prescription drug order for a patient in an LTCF or for a patient with a documented terminal illness may be filled in partial quantities and individual dosage units. The pharmacist must record that the patient is either “terminally ill” or an “LTCF patient.” (3-21-12)

**03. Schedule II Partial-Fill Documentation.** For each partially filled prescription drug order, the following information must be recorded: (3-21-12)

- a. The date; (3-21-12)
- b. The quantity dispensed; (3-21-12)
- c. The remaining quantity authorized for dispensing; and (3-21-12)
- d. The identification of the dispensing pharmacist. (3-21-12)

**04. Partial Filling of Schedule III, IV, and V Prescriptions.** The partial filling of a prescription drug order for a controlled substance listed in Schedules III, IV, or V is permissible if: (3-21-12)

- a. Each partial fill is recorded in the same manner as a refill; (3-21-12)
- b. The total quantity dispensed in partial fillings does not exceed the total quantity prescribed; and (3-21-12)
- c. Dispensing does not occur after six (6) months from the date on which the prescription drug order was issued. (3-21-12)

## **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-1602**

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

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-fourth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 3, 2016, [Vol. 16-8, pages 130-133](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0101-1602](http://www.deq.idaho.gov/58-0101-1602) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

Dated this 2nd day of November, 2016.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208) 373-0418 / Fax No. (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING NOTICE 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. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

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

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**Tuesday, September 6, 2016 - 3:00 PM**

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**Department of Environmental Quality**  
**Conference Room A**  
**1410 N. Hilton**  
**Boise, ID 83706**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to delete Section 582, Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM-10. In reviewing the Rules for Control of Air Pollution in Idaho, DEQ discovered that Section 582 is outdated and no longer applicable. Section 582 was originally promulgated in 2001 to address Clean Air Act transportation conformity requirements for the PM10 Ada County nonattainment area. Transportation conformity requires an area experiencing air quality problems to have a transportation plan consistent with air quality goals. Section 582 was promulgated as a temporary measure that was necessary until a required maintenance plan was developed. The maintenance plan has since been developed and was approved by EPA on October 17, 2003.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2016 for adoption of a pending rule. This pending rule docket is expected to be final and effective upon adjournment of the 2017 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule docket to EPA for removal of Section 582 from Idaho's State Implementation Plan.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because the provisions are outdated and are no longer applicable.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 6, 2016.

Dated this 3rd Day of August, 2016

**LSO Rules Analysis Memo**



THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-1602

~~582. INTERIM CONFORMITY PROVISIONS FOR NORTHERN ADA COUNTY FORMER NONATTAINMENT AREA FOR PM-10.~~

~~The purpose of Section 582 is to implement part of the settlement of "Idaho Clean Air Force, et al. v. EPA, et al." Section 582 requires that the growth in transportation related PM-10 emissions be offset annually in the absence of federal transportation conformity requirements in the former PM-10 nonattainment area in northern Ada County, Idaho. Section 582 will remain in place until a PM-10 maintenance demonstration and maintenance plan containing a motor vehicle emissions budget can be developed, submitted to the U.S. Environmental Protection Agency (EPA) and approved as meeting the requirements of Section 175A of the Clean Air Act, and the transportation plan and TIP for northern ADA County has been found to conform to the applicable implementation plan. The Department will prepare a PM-10 maintenance plan within the agreed upon time frame to be submitted to EPA for approval.~~

~~(3-30-01)~~

~~01. Definitions. Terms not specifically defined in Subsection 582.01 are defined in Sections 565 and 566 of these rules.~~

~~(3-30-01)~~

~~a. Annual Reduction Amount. Represents the estimated, annual average increase in PM-10 emissions in the former nonattainment area expected between the years 1997 and 2005 and is calculated at seven hundred fifty (750) kg/day.~~

~~(3-30-01)~~

~~b. Consent Decree. The consent decree approved by the Ninth Circuit Court of Appeals to resolve "Idaho Clean Air Force, et al. v. EPA, et al.," (Ninth Circuit Docket Nos. 99-70289 & 99-70576).~~

~~(3-30-01)~~

~~c. Emissions Reductions. Reductions in emissions of PM-10 or PM-10 precursors to be achieved by transportation control measures (as defined in 40 CFR 93.101) or other binding emissions control measures. Control measures adopted by the Metropolitan Planning Organization and approved by the Department shall be enforceable obligations of the State Implementation Plan (SIP).~~

~~(3-30-01)~~

~~d. Former Nonattainment Area. That portion of northern Ada County designated as a nonattainment area for PM-10 by 40 CFR 81.87 prior to March 12, 1999.~~

~~(3-30-01)~~

~~e. Interim Period. The period beginning with the fiscal year commencing October 1, 2000, until EPA approves a maintenance plan containing a motor vehicle emission budget for the former nonattainment area and the Metropolitan Planning Organization adopts a transportation plan and TIP that is found to conform in accordance with Section 176(e) of the Clean Air Act and 40 CFR Part 93.~~

~~(3-30-01)~~

~~f. Metropolitan Planning Organization (MPO). For purposes of Section 582, Community Planning Association of Southwest Idaho (COMPASS), or its successor organization, is the MPO for the former nonattainment area.~~

~~(3-30-01)~~

~~g. Regionally Significant Project. A transportation project, other than an exempt project, that is on a facility which serves regional transportation needs (such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including, at a minimum:~~

~~(3-30-01)~~

~~i. All principal arterial highways;~~

~~(3-30-01)~~

~~ii. All fixed guideway transit facilities that offer an alternative to regional highway travel; and~~

~~(3-30-01)~~

~~iii. Any other facilities determined to be regionally significant through Section 570, interagency consultation.~~

~~(3-30-01)~~



~~02. **Applicability.** The provisions of Section 582 shall apply during the interim period. The transportation conformity requirements of 40 CFR Part 93 applicable to nonattainment areas shall apply to the former nonattainment area pursuant to 42 U.S.C. Section 7506(c)(5) if the area is designated nonattainment or attainment with an approved maintenance plan. The provisions of Section 582 shall no longer apply after a maintenance demonstration and maintenance plan containing motor vehicle emissions budget(s) for PM-10 is submitted by the Department as a State Implementation Plan (SIP) revision, has been approved by EPA as meeting the requirements of Section 175A of the Clean Air Act, and a transportation plan and TIP have been found to conform to the applicable implementation plan pursuant to 40 CFR Part 93.~~ (3-30-01)

~~03. **Adoption of Control Measures and Demonstration of Emissions Reductions.** As a precondition to:~~ (3-30-01)

~~a. The expenditure of any non exempt federal transportation funds that would be prohibited under a conformity lapse;~~ (3-30-01)

~~b. The construction of any regionally significant projects that would be prohibited under a conformity lapse;~~ (3-30-01)

~~c. The execution by the Idaho Transportation Department or the Ada County Highway District of any project agreements required by 23 U.S.C. Section 106(a) that would be prohibited under a conformity lapse; or~~ (3-30-01)

~~d. The execution of agreements with contractors to begin construction on a highway project that is not exempt from a conformity determination pursuant to 40 CFR 93.126 and 93.127 during any fiscal year during the interim period, the MPO shall:~~ (3-30-01)

~~i. Demonstrate that the control measures adopted to achieve emissions reductions in prior fiscal years have been implemented and will continue to be implemented during the next fiscal year;~~ (3-30-01)

~~ii. Demonstrate that the control measures adopted to achieve emissions reductions have achieved the magnitude of emissions reductions expected as a result of the implementation of such measures;~~ (3-30-01)

~~iii. Adopt (subject to approval by the Department pursuant to Subsection 852.04) control measures adequate to achieve emissions reductions reasonably calculated to reduce actual emissions during the next fiscal year in the former nonattainment area by the annual reduction amount, at a minimum, in addition to any emissions reductions required to be achieved prior to the beginning of such fiscal year; and~~ (3-30-01)

~~iv. With regard to control measures that will not be implemented directly by the MPO, obtain written commitments from the responsible entities that the control measures will be implemented in the manner and within the fiscal year required to meet the emission reductions.~~ (3-30-01)

~~04. **Department Review.** Following adoption by the MPO, the control measures designed to achieve the new emissions reductions for the next fiscal year, associated emissions calculations, and the demonstrations required by Subsection 582.03 shall be submitted to the Department no later than April 1 of each year. The Department shall review and approve the submission if the Department determines that the requirements of Subsection 582.03 are met in accordance with the following:~~ (3-30-01)

~~a. The Department will respond to the submittal within thirty (30) days of receipt. The response may include approval of the submission, a request for further information, or conditional approval of the control measures subject to submission of evidence that entities responsible for implementation of the measures have adopted any ordinances, appropriations or other approvals needed to complete the implementation of such measures. If further information is required, such information shall be submitted to the Department within thirty (30) days of request. The Department shall take final action to approve or deny the submission within ninety (90) days of the MPO's submission of the documentation required by Subsection 582.03; and~~ (3-30-01)

~~b. The Department shall by July 1 of each year during the interim period provide to the MPO, the Ada~~

~~County Highway District Commissioners and the Idaho Department of Transportation a report listing the emissions control measures implemented and the emissions control measures planned but not yet implemented for the then-current fiscal year, together with the Department's written determination as to whether the Emissions Reductions associated with such emissions control measures satisfy the requirements under Section 582. (3-30-01)~~

~~05. **First Year Emissions Reductions.** For the initial fiscal year to which Section 582 applies, the MPO shall adopt new control measures reasonably calculated to achieve emissions reductions of two thousand (2000) kg/day. The MPO may take credit for any reductions in transportation related emissions of PM-10 that were actually achieved by the implementation of enforceable control measures or other measures following March 12, 1999, and that continue to be implemented during the interim period. (3-30-01)~~

~~06. **Restrictions if Emissions Reductions Not Adopted.** If the MPO adopts control measures for the purpose of achieving emissions reductions in a fiscal year, and the relevant local governmental entities do not adopt the necessary implementing ordinances or appropriate necessary funds, if any, by the beginning of the following fiscal year, the MPO shall not expend any non-exempt federal transportation funds or construct any regionally significant projects, that would be prohibited under a conformity lapse, in such following fiscal year until each of the relevant local governmental entities, if any, take such actions as may be necessary to implement the control measures previously approved by the MPO and the Department. (3-30-01)~~

~~07. **Restrictions on TIP if Emissions Reductions Not Adopted or Achieved.** If: (3-30-01)~~

~~a. Control measures required to achieve emissions reductions for a prior fiscal year have not been implemented, or (3-30-01)~~

~~b. The Department does not approve the control measures submitted by the MPO as adequate to achieve the required emissions reductions for any fiscal year, then: (3-30-01)~~

~~i. The MPO shall not submit any TIP or TIP revision for a project subject to the requirements of Subsection 582.03, that would be prohibited under a conformity lapse, to the Idaho Transportation Department for inclusion into the State Transportation Improvement Program or to FHWA/FTA for approval, and (3-30-01)~~

~~ii. No new agreement for a project subject to the requirements of Subsection 582.03, that would be prohibited under a conformity lapse, may be executed by the Idaho Transportation Department or the Ada County Highway District until control measures adequate to achieve the total emissions reductions required for any prior fiscal year are implemented and the control measures adequate to achieve the total emissions reductions for the next fiscal year are approved. (3-30-01)~~

583~~2~~. -- 584. (RESERVED)

## **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-1603**

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

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-fourth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of Idaho's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act. It also updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 3, 2016, [Vol. 16-8, pages 134-136](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0101-1603](http://www.deq.idaho.gov/58-0101-1603) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

Dated this 2nd day of November, 2016.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208) 373-0418 / Fax No. (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of Idaho's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act. It also updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

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

**Tuesday, September 6, 2016 - 3:00 PM**

**Department of Environmental Quality  
Conference Room A  
1410 N. Hilton  
Boise, ID 83706**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2016.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2016 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2017 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule to EPA for approval.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at [www.deq.idaho.gov/58-0101-1603](http://www.deq.idaho.gov/58-0101-1603) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 6, 2016.

Dated this 3rd Day of August, 2016.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-1603**

**107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

**02. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

**a.** All federal publications: U.S. Government Printing Office at <http://www.ecfr.gov/cgi-bin/ECFR>; and; (3-25-16)

**b.** Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and (3-20-14)

**c.** All documents herein incorporated by reference: (7-1-97)

**i.** Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

**ii.** State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

**03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-1-94)

**a.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR Part 51 revised as of July 1, 2015. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (3-25-16) ( )

**i.** All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

**ii.** Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

- b. National Primary and Secondary Ambient Air Quality Standards, [40 CFR Part 50](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- c. Approval and Promulgation of Implementation Plans, [40 CFR Part 52](#), Subparts A and N and Appendices D and E, revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- d. Ambient Air Monitoring Reference and Equivalent Methods, [40 CFR Part 53](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- e. Ambient Air Quality Surveillance, [40 CFR Part 58](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- f. Standards of Performance for New Stationary Sources, [40 CFR Part 60](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- g. National Emission Standards for Hazardous Air Pollutants, [40 CFR Part 61](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- h. Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008, [40 CFR Part 62, Subpart HHH](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- i. National Emission Standards for Hazardous Air Pollutants for Source Categories, [40 CFR Part 63](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- j. Compliance Assurance Monitoring, [40 CFR Part 64](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- k. State Operating Permit Programs, [40 CFR Part 70](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- l. Permits, [40 CFR Part 72](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- m. Sulfur Dioxide Allowance System, [40 CFR Part 73](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- n. Protection of Stratospheric Ozone, [40 CFR Part 82](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~( )
- o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- p. Medical Waste Combustors, [Section 39-128, Idaho Code \(1992\)](#). (3-20-14)

## **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE**

**DOCKET NO. 58-0105-1601**

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

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-fourth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 3, 2016, [Vol. 16-8, pages 137-143](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0105-1601](http://www.deq.idaho.gov/58-0105-1601) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Matt Alvarado at [matt.alvarado@deq.idaho.gov](mailto:matt.alvarado@deq.idaho.gov) or (208) 373-0554.

Dated this 2nd day of November, 2016.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208) 373-0418 / Fax No. (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 17, 2016. If no such written request is received, a public hearing will not be held.



**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2016. In addition, this rulemaking also denotes instances where emergency notifications must be made to the Idaho Office of Emergency Management in addition to the National Response Center.

Groups interested in hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2016 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2017 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Section 67-5223(4), Idaho Code, DEQ prepared a brief synopsis detailing the substantive difference between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at [www.deq.idaho.gov/58-0105-1601](http://www.deq.idaho.gov/58-0105-1601) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting EPA's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Matt Alvarado at [matt.alvarado@deq.idaho.gov](mailto:matt.alvarado@deq.idaho.gov) or (208)373-0554.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 31, 2016.

DATED this 3rd Day of August, 2016.

**LSO Rules Analysis Memo**



THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0105-1601

**002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2015~~6~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-25-16)~~( )

**01. Exceptions.** Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (5-8-09)

**02. Availability of Referenced Material.** The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

- a. U.S. Government Printing Office, <http://www.ecfr.gov/cgi-bin/ECFR>; and (3-25-16)
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208) 334-3316; and (7-2-97)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (7-2-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~. For the purposes of 40 CFR 260.10 in the definition of electronic manifest and electronic manifest system, "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. ~~(3-25-16)~~( )

**005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts (excluding 261.4(b)(17)), except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), 40 CFR 261.41, and 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. Copies of annual reports and advance notifications under these sections shall also be sent to the Director. ~~(3-25-16)~~( )

**01. Hazardous Secondary Materials Managers Emergency Notification.** In addition to the emergency notification required by 40 CFR 261.411(d)(3) and 261.420(f)(4)(ii), the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. ( )

**02. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment

process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.0~~4~~<sup>2</sup>.b. and 005.0~~4~~<sup>2</sup>.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. ~~(3-16-96)~~( )

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.0~~4~~<sup>2</sup>.b., “new source” shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.0~~4~~<sup>2</sup>.d. ~~(3-16-96)~~( )

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.0~~4~~<sup>2</sup>.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.0~~4~~<sup>2</sup>.d. ~~(3-16-96)~~( )

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.0~~4~~<sup>2</sup>.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.0~~4~~<sup>2</sup>.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. ~~(3-16-96)~~( )

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.0~~4~~<sup>2</sup>.d.; and ~~(3-16-96)~~( )

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.0~~4~~<sup>2</sup>.b.iv. ~~(3-16-96)~~( )

vi. For purposes of Subsections 005.0~~4~~<sup>2</sup>.b. and 005.0~~4~~<sup>2</sup>.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. ~~(3-16-96)~~( )

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.0~~4~~<sup>2</sup>.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. ~~(3-16-96)~~( )

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.0~~4~~<sup>2</sup>.d. ~~(3-16-96)~~( )

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed

the levels set forth in Subsection 005.0~~4~~<sup>2</sup>.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.0~~4~~<sup>2</sup>.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. ~~(3-16-96)~~( )

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.0~~4~~<sup>2</sup>.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: ~~(3-16-96)~~( )

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.0~~4~~<sup>2</sup>.d.; or ~~(3-16-96)~~( )

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.0~~4~~<sup>2</sup>.d. ~~(3-16-96)~~( )

**d.** Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

**e.** Modification of Treatment Process. (3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Waste Management and Remediation Division, 1410 N. Hilton, Boise, Idaho 83706. (3-29-12)

**f.** Records and Data Retention and Submittal. (3-16-96)

- i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)
- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)
- iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)
- iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)
- g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

**006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.**

**01. Incorporation by Reference.** 40 CFR Part 262 and all Subparts (excluding Subparts I and J and 40 CFR 262.10(j), 262.34(j),(k),(l)), except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015<sup>6</sup>. For purposes of 40 CFR 262.53, 262.55, and 262.56, "EPA" shall be defined as the U.S. Environmental Protection Agency. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.20, 262.21, 262.24, 262.25, 262.51, 262.54(e), 262.54(g)(1), 262.55, 262.56, 262.60, and 262.85(g), EPA or Environmental Protection Agency shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States. (3-25-16)( )

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

**007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.**

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015<sup>6</sup>. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States. For the purposes of 40 CFR 263.20(a), "EPA" shall be defined as U.S. Environmental Protection Agency. (3-25-16)( )

**008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as

provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71 and 264.1082(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-25-16)~~( )

**009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.1(c)(15), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)), except the language contained in 40 CFR 265.340(b)(2) as replaced with: “The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part,” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71 and 265.1083(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-25-16)~~( )

**010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.**

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>. ~~(3-25-16)~~( )

**011. LAND DISPOSAL RESTRICTIONS.**

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) “EPA” shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV). ~~(3-25-16)~~( )

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.1(c)(2)(ix), 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. ~~(3-25-16)~~( )

**013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).**

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>, except that the last sentence of 40 CFR 124.10(b)(1), 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. ~~(3-25-16)~~( )

**014. (RESERVED)**

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation by Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by

reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>. For purposes of 40 CFR 279.43(c)(3)(ii) “Director” shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. ~~(3-25-16)~~( )

**02. Used Oil as a Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

**a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

**b.** Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>. For purposes of 40 CFR 273.32(a)(3), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-25-16)~~( )

**017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.**

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>. ~~(3-25-16)~~( )

**018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.**

40 CFR Part 267 and all Subparts, except 40 CFR 267.150, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 201~~5~~<sup>6</sup>. ~~(3-25-16)~~( )