

PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Health & Welfare Committee
67th Idaho Legislature
First Regular Session – 2023



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2023

SENATE HEALTH & WELFARE COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.02.01 – IDAHO TIME SENSITIVE EMERGENCY SYSTEM COUNCIL
DOCKET NO. 16-0201-2201 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo, Incorporation By Reference Synopsis \(IBRS\), & Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 56-1028, Idaho Code.

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

Under [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule language.

Changes to text being made at this pending stage are to clarify the proposed language, eliminate obsolete language, and streamline rule text. They do not include any meaningful policy changes to the proposed text.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, [Vol. 22-9, pages 18 through 29](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 56-1007, Idaho Code. There are no changes to the fees paid by hospitals for designation under the Idaho TSE system under this chapter of rule.

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 is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule fee, contact Melissa Ball at 208-334-2124.

DATED this 7th day of November, 2022.

Trinette Middlebrook and Frank Powell
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-1028, Idaho Code.

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

Virtual Public Hearing via WebEx
Wednesday, September 14, 2022 10:00 a.m. to 11:00 a.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=mcd8a20e3247caf4c2f80d082a7be70de
Join by meeting number: Meeting number (access code): 2763 084 9654 Meeting password: xjBWsJb5w74 (95297525 from phones and video systems)
Tap to join from a mobile device (attendees only): +1-415-527-5035,,27630849654#95297525# United States Toll +1-303-498-7536,,27630849654#95297525# United States Toll (Denver) Some mobile devices may ask attendees to enter a numeric password.
Join by phone: +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)
Join from a video system or application: Dial 27630849654@idhw.webex.com
Join using Microsoft Lync or Microsoft Skype for Business: Dial 27630849654.idhw@lync.webex.com

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

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

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule language.

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

Applicants applying for a TSE designation must submit the appropriate designation fees with their application for initial designation and renewal. The designation fees are for a three (3) year designation and payable on an annual basis. There are three (3) sets of fees in this chapter:

- Trauma Designation and TSE On-Site Survey Fees
- Stroke Designation and TSE On-Site Survey Fees
- STEMI (Heart Attack) Designation and TSE On-Site Survey Fees

None of the fees in this chapter of rules are being changed.

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 is not anticipated to have any fiscal impact on the State General Fund, or any other known 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 February 2, 2022, Idaho Administrative Bulletin, [Vol. 22-2, pages 36-37](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the Time Sensitive Emergency Standards Manual, Edition 2023-1 is being incorporated by reference into these rules to give it the force and effect of law. This will replace the currently incorporated document, Edition 2020-1. The document is not being published in this chapter of rules due to its length and format. If approved by the 2023 Legislature, after Sine Die, 2023, the TSE Standards Manual, Edition 2023-1, will be available at: <https://publicdocuments.dhw.idaho.gov/WebLink/browse.aspx?id=16512&dbid=0&repo=PUBLIC-DOCUMENTS>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Melissa Ball at (208) 334-2124.

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, 2022.

DATED this 5th day of August, 2022.

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 16-0201-2201

Substantive changes have been made in the pending rule.
Italicized red text indicates changes between the text of the proposed rule as adopted in the pending rule.

16.02.01 – IDAHO TIME SENSITIVE EMERGENCY SYSTEM COUNCIL

000. LEGAL AUTHORITY.

Section 56-1028, Idaho Code, *authorizes the Idaho Time Sensitive Emergency System Council (TSE)* to promulgate rules *to establish* standards and *administer* a voluntary *TSE* system. Sections 56-1024 through 56-1030, Idaho Code, provide requirements for the TSE Council, its membership, duties, regional TSE committees, standards criteria, and the designation of centers. *Section 56-1007, Idaho Code, authorizes the* Department to charge and collect fees and *Section 57-2003, Idaho Code, authorizes the Department* to establish the Idaho (TSE) Registry. ()

001. SCOPE AND INTENT.

01. Scope. These rules provide for the administration and establishment of standards for a voluntary statewide TSE system of care that includes procedures and requirements for designation of trauma, stroke, and heart attack centers including data reporting, fees, appeal process and enforcement procedures, determination of regions to provide an effective access to the TSE System within the state, and operational procedures for regional TSE committees. ()

02. Intent. With the maturation of the TSE system, the intent is for the state to have the ability to designate TSE centers without reliance on national accreditation bodies. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The Time Sensitive Emergency Standards Manual, Edition 2023-1, hereafter referred to as the TSE Standards Manual, is incorporated by reference in this chapter of rules. Copies of the manual may be obtained online at <https://tse.idaho.gov/>. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. Department. The Idaho Department of Health and Welfare. ()

02. 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. ()

03. Facility. A health care organization that is voluntarily seeking designation from the Idaho TSE Council. A facility may be any of the following: ()

a. Center as designated by the Idaho TSE Council. ()

b. Freestanding emergency department: ()

i. Owned by a hospital with a dedicated emergency department; ()

ii. Located within thirty-five (35) miles of the hospital that owns or controls it; ()

iii. Provides emergency services twenty-four (24) hours per day, seven (7) days per week on an outpatient basis; ()

iv. Physically separate from a hospital; and ()

- v. Meets the staffing and service requirements in IDAPA 16.03.14, “Hospitals.” ()
- c. Hospital as defined in Section 39-1301, Idaho Code. ()
- d. A health care clinic in a rural area that is located more than thirty-five (35) miles from a hospital via maintained roads and *can provide* emergency care to patients. ()
- 04. Heart Attack.** STEMI, a common name for ST-elevation myocardial infarction, is a more precise definition for a type of heart attack caused by a prolonged period of blocked blood supply that affects a large area of the heart and has a substantial risk of death or disability calling for a quick response. ()
- 05. Idaho Time Sensitive Emergency (TSE) System Council.** The Idaho TSE System Council established in Section 56-1027, Idaho Code. ()
- 06. National Accrediting Body.** An organization whose standards criteria is recognized by the Idaho TSE System Council and verifies compliance with those standards. ()
- 07. Regional Time Sensitive Emergency (TSE) Committee.** An Idaho regional TSE committee established under Section 56-1030, Idaho Code. ()
- 08. STEMI.** STEMI is an ST segment elevation myocardial infarction that is a particular type of heart attack, or MI (myocardial infarction), that is caused by a prolonged period of blocked blood supply. It affects a large area of the heart muscle, and so causes changes on the ECG as well as in blood levels of key chemical markers. This is considered a major heart attack and is referred to in medical shorthand as a STEMI. ()
- 09. Stroke.** An interruption of blood flow to the brain causing paralysis, slurred speech, or altered brain function usually caused by a blockage in a blood vessel that carries blood to the brain (ischemic stroke) or by a blood vessel bursting (hemorrhagic stroke). ()
- 10. Time Sensitive Emergency (TSE).** Time sensitive emergencies specifically for this chapter of rules are trauma, stroke, and heart attack. ()
- 11. Trauma.** The result of an act or event that damages, harms, or hurts a human being resulting in intentional or unintentional damage to the body resulting from acute exposure to mechanical, thermal, electrical, or chemical energy, or from the absence of such essentials as heat or oxygen. ()
- 12. TSE-Designated Center.** A facility that has voluntarily applied for TSE designation, has met designation criteria, remains in compliance with the designation criteria of these rules, and that the TSE Council has designated as one (1) or more of the following: ()
- a. Level I Trauma Center; ()
 - b. Level II Trauma Center; ()
 - c. Level III Trauma Center; ()
 - d. Level IV Trauma Center; ()
 - e. Level V Trauma Center; ()
 - f. Pediatric Level I Trauma Center; or ()
 - g. Pediatric Level II Trauma Center; ()
 - h. Level I Stroke Center (Comprehensive); ()

- i. Level II+ Stroke Center (Thrombectomy Capable); ()
- j. Level II Stroke Center (Primary); or ()
- k. Level III Stroke Center (Acute Stroke Ready); ()
- l. Level I+ STEMI Center (Cardiogenic Shock Capable); ()
- m. Level I STEMI Center (Heart Attack Receiving); or ()
- n. Level II STEMI Center (Heart Attack Referring). ()
- 13. **TSE Registry.** The population-based data system defined under Section 57-2003, Idaho Code. ()

14. **TSE System.** An organized statewide approach to treating trauma, stroke, and heart attack patients that establishes and promotes standards for patient transportation, equipment, and information analysis for effective and coordinated TSE care. ()

011. -- 074. (RESERVED)

075. TSE COUNCIL.

Under Section 56-1027, Idaho Code, the TSE Council will consist of members appointed by the Governor of Idaho and the chair of each regional TSE committee and is responsible for duties described under Section 56-1028, Idaho Code. ()

076. -- 079. (RESERVED)

080. TSE REGIONS.

Under Section 56-1028, Idaho Code, the TSE Council is required to establish TSE regions that provide more effective access to the Idaho TSE system through education, but not for the purpose of promoting competition, restricting, or directing patient referrals within the region. The TSE Council has established six (6) regions in Idaho described in the TSE Standards Manual. ()

081. REALIGNMENT OF TSE REGION.

The TSE Council may realign a region by initiation of the TSE Council, or at the request of a regional TSE committee, a county or local government entity within the region, a TSE-designated center, or a licensed EMS agency within the region. ()

01. **Requesting Entity.** The requesting entity must forward correspondence to the TSE Council specifying the reason for the realignment request *that* includes: ()

- a. Existing patient routing patterns used by both EMS agencies and health care centers; ()
- b. Distances and transport times involved in patient routing patterns; ()
- c. A list of all entities affected by the request; ()
- d. A list of all other licensed health care facilities and licensed EMS agencies in the county; and ()
- e. Documentation that all affected regional TSE committees are agreeable to the realignment. ()

02. **Copies of Request.** The entity requesting the TSE Council for realignment must provide copies of the correspondence to all affected regional TSE committees, county and local governments, licensed health care facilities, and EMS agencies in the requesting entity's county. ()

03. TSE Decision. The TSE Council will evaluate the request *for realignment* based on the impact to patient care and will notify all parties of the council's decision. ()

082. REGIONAL TSE COMMITTEES.

The regional TSE committees' organization and responsibilities are described under Section 56-1030, Idaho Code. ()

083. -- 099. (RESERVED)

100. DESIGNATION OF TSE CENTERS -- CRITERIA.

Under Section 56-1029, Idaho Code, the TSE Council will designate a hospital as a trauma, stroke, or STEMI center when such hospital, upon proper application and verification, is found by the TSE Council to meet an applicable designation level for trauma, stroke, or STEMI designation criteria established in the TSE Standards Manual. ()

101. -- 104. (RESERVED)

105. TRAUMA DESIGNATION CENTERS.

To be a TSE-designated Level I, II, III, IV, V, or a Pediatric Level I or Level II Trauma Center, a facility must meet or exceed required standards published for state designation in the TSE Standards Manual. ()

106. -- 109. (RESERVED)

110. STROKE DESIGNATION CENTERS.

To be a TSE-designated Level I, II, II+ (Thrombectomy), or III Stroke Center, a facility must meet or exceed required standards published for state designation in the TSE Standards Manual. ()

111. -- 114. (RESERVED)

115. STEMI DESIGNATION CENTERS.

To be a TSE-designated Level I+ (Cardiogenic Shock), or II STEMI Center, a facility must meet or exceed required standards published for state designation in the TSE Standards Manual. ()

116. -- 119. (RESERVED)

120. DESIGNATION OF CENTERS -- GENERAL REQUIREMENTS.

01. Application. A facility applying for initial TSE designation must *apply* along with applicable fees for each designation it is requesting. Application process and requirements are provided in the TSE Standards Manual. ()

02. Initial Designation. Initial designation requires completion of appropriate application, submission of appropriate fees, and completion of an appropriate site survey based on the TSE Standards Manual. ()

121. -- 189. (RESERVED)

190. TSE DESIGNATION -- LENGTH OF DESIGNATION.

A TSE center will be designated for a period of three (3) years, unless the designation is rescinded by the TSE Council for noncompliance with the designation standards of these rules or adjusted to coincide with applicable external verification timetables. ()

191. RENEWAL OF TSE DESIGNATION.

A TSE center must submit its renewal application and applicable fees no later than three (3) months prior to the center's designation expiration date. Designation will not lapse due to a delay in scheduling the site survey, if the delay is through no fault of renewing center. ()

192. -- 194. (RESERVED)

195. NOTIFICATION OF LOSS OF CERTIFICATION OR LICENSURE.

Any TSE-designated center that has a loss of certification or licensure must immediately notify the TSE Council. ()

196. -- 199. (RESERVED)

200. DESIGNATION AND TSE SITE SURVEY FEES.

01. Application With National Verification. An applicant applying for a TSE designation that is verified by a national accrediting body must submit the appropriate designation fees with its application for initial designation and renewal. The designation fees are for a three (3) year designation and are payable on an annual basis. TSE designation fees are not to exceed those listed in Subsections 200.03 through 200.05 of this rule. ()

02. Application Without National Verification. An applicant who requires a TSE site survey prior to designation is required to pay the applicable site survey fee at the time of application. TSE designation and site survey fees are not to exceed those listed in Subsections 200.03 through 200.05 of this rule. ()

03. Trauma Designation and TSE Site Survey Fees.

TRAUMA DESIGNATIONS 200.03	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE SITE SURVEY FEE (Not to exceed)
LEVEL I	\$45,000 / \$15,000	\$3,000 / Not applicable with national or acceptable state verification
LEVEL II	\$36,000 / \$12,000	\$3,000 / Not applicable with national or acceptable state verification
LEVEL III	\$24,000 / \$8,000	\$3,000 / Not applicable with national or acceptable state verification
LEVEL IV	\$12,000 / \$4,000	\$1,500 / Not applicable with national or acceptable state verification
LEVEL V	\$3,000 / \$1,000	\$1,500
PEDIATRIC LEVEL I and LEVEL II	\$36,000 / \$12,000	No fee. Must be ACS verified

04. Stroke Designation and TSE Site Survey Fees.

STROKE DESIGNATIONS 200.04	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE SITE SURVEY FEE (Not to exceed)
LEVEL I	\$21,000 / \$7,000	\$3,000 / Not applicable with national or acceptable state verification
LEVEL II and LEVEL II+	\$12,000 / \$4,000	\$3,000 / Not applicable with national or acceptable state verification

STROKE DESIGNATIONS 200.04	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE SITE SURVEY FEE (Not to exceed)
LEVEL III	\$1,500 / \$500	\$1,500/ Not applicable with national or acceptable state verification

()

05. STEMI Designation and TSE Site Survey Fees.

STEMI DESIGNATIONS 200.05	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE SITE SURVEY FEE (Not to exceed)
LEVEL I and LEVEL I+	\$21,000 / \$7,000	\$3,000 / Not applicable with national or acceptable state verification
LEVEL II	\$1,500 / \$500	\$1,500 / Not applicable with national or acceptable state verification

()

06. Designation Fee Payment. After completion of the TSE site survey, the TSE Council will notify the applicant facility of the designation determination by letter. The applicant facility must then pay either the annual designation fee or the entire three (3) year designation fee. After designation notification and upon the Department's receipt of the designation fee, designation is effective. The TSE Council will send a certificate of designation and confirmation of the designation period. Annual designation fees for those facilities paying yearly are due to the Department within thirty (30) days of the date of the invoice to maintain designation. Failure to meet this deadline will result in suspension or revocation of designation *under* Section 285 of these rules. ()

201. -- 249. (RESERVED)

250. TSE SITE SURVEY.

The TSE Council will conduct a site survey of each TSE-designated center at least once every three (3) years, unless the center has been verified by a national accrediting body to meet or exceed the standards set in these rules. The TSE Council will schedule the site survey with the designated center in a timely manner. ()

251. TSE SITE SURVEY -- GENERAL REQUIREMENTS.

The TSE site survey will consist of and consider each facility's application and compliance with the TSE Standards Manual for the specific type of designation being requested. The general requirements in Subsections 251.01 through 251.06 of this rule apply: ()

01. Survey Team Member Requirements. Survey team members will meet the following inclusion criteria: ()

- a.** A physician surveyor must: ()
 - i.** Be certified by the American Board of Medical Specialties or the American Board of Osteopathic Medicine; ()
 - ii.** Be board-certified in the specialty area being represented on the review team; ()
 - iii.** Be currently active, or active in the last twelve (12) months, in trauma, stroke, or emergency cardiac care at a center that is at or above the level being reviewed; ()

- iv. Have no conflict of interest with the facility under review; and ()
- v. Be from outside the region of the center being verified. ()
- b. A nurse surveyor or program manager must: ()
 - i. Be currently active, or active in the last twelve (12) months, in trauma, stroke, or emergency cardiac care at a center that is at or above the level being reviewed; ()
 - ii. Have no conflict of interest with the facility under review; and ()
 - iii. Be from outside the region of the center being verified. ()

02. Communication Between Surveyors and Facilities. To standardize ethical practice, all communication between surveyors and facilities prior to the survey must be facilitated by TSE program staff. ()

03. Survey Team Member Notification of Potential Conflict of Interest. Upon being assigned to a site survey team, a potential team member must notify the TSE Council of any potential conflict of interest regarding any financial, professional, or personal bias that may affect the survey of the applicant's facility. ()

04. Notification to Applicant of Survey Team Members. The TSE Council will provide the applicant with the names of the site survey team once they have been selected and at least thirty (30) calendar days prior to the scheduled survey. ()

05. Facility Notification to TSE Council of Potential Conflict of Interest. If the applicant believes that a potential surveyor has a financial, professional, or personal bias that may affect the survey, the applicant must notify the TSE Council in writing no later than seven (7) calendar days after the applicant receives the TSE Council's notification of the proposed survey team. ()

06. Notification of Decision for Conflict of Interest. The TSE Council will consider the conflict of interest notice and make a decision concerning replacement of the survey team member in question. No person who has a substantial conflict of interest in the operation of any facility under review will participate in the site survey of the applicant. ()

252. SITE SURVEY -- SURVEY TEAM COMPOSITION.
The TSE Council will select a site survey team based on the applicant's designation application and specifications provided in these rules and the standards published in the TSE Standards Manual. ()

253. SITE SURVEY -- ADDITIONAL SURVEYS.
The TSE Council may conduct additional, announced or unannounced, site reviews of TSE-designated centers or applicants when there is reason to believe that the center is not in compliance with the designation criteria standards of these rules. ()

254. -- 259. (RESERVED)

260. DESIGNATION DECISION.

01. Summary Report. The survey team will present a verbal summary of the survey results to the applicant. The survey team will submit in writing to the TSE Council its recommendation on the center's designation *upon* completion of the site survey. ()

02. Written Report. The TSE Council will consider all evidence and notify the applicant in writing of its decision within thirty (30) calendar days of receiving the survey team's recommendation. ()

03. Final Determination. The TSE Council's final determination regarding each application will be based upon consideration of: ()

- a. The application; ()
- b. The evaluation and recommendations of the site survey team; ()
- c. The best interests of patients; and ()
- d. Any unique attributes or circumstances that make the facility capable of meeting special community needs. ()

04. Provisional Designation. The TSE Council may grant a provisional designation to a facility with deficiencies it deems correctable. A facility receiving a provisional designation must: ()

- a. Resolve the deficiencies within the time specified by the TSE Council; ()
- b. Submit documentation that the deficiency has been resolved; and ()
- c. If necessary, submit to an additional focused site survey and pay the applicable survey fees. ()

05. Denial. If the TSE Council denies an applicant a designation, the provisions of IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings,” will apply. ()

261. -- 269. (RESERVED)

270. WAIVERS.

01. Granting a Waiver. The TSE Council may grant a waiver from one (1) or more designation criteria for a center applying for TSE designation. ()

02. Waiver Application. A center requesting a waiver must submit a completed TSE Waiver Application Form. The TSE Council may require the applicant to provide additional information, and the application will not be considered complete until all required information is provided. ()

03. Post Notice. A center requesting a waiver must post a notice of the waiver application at all public entrances to the center and in at least one (1) area that is commonly used by the patients. The notice must: ()

- a. Include a meaningful description of the reason for the waiver; ()
- b. Be posted on the date the waiver application is submitted; ()
- c. Remain posted for a minimum of thirty (30) calendar days; and ()
- d. Describe where and to whom comments may be submitted during the thirty (30) calendar days. ()

04. Notice Distribution. When the notice is posted, the center must distribute copies of the notice to prehospital emergency medical service agencies active in the community served by the center. ()

05. Waiver Application Submission. *To be placed on the agenda,* the completed waiver application must be submitted to the TSE Council at least thirty (30) calendar days before a TSE Council meeting. Applications submitted less than thirty (30) calendar days in advance of a TSE Council meeting will be placed on the next agenda. ()

06. Waiver Application Distribution. The TSE Council will make available the public notice of the TSE Council meeting regarding the waiver application to all TSE-designated centers. ()

07. Waiver Application Review. The regional TSE committee must review the request and make

recommendations to the TSE Council. The TSE Council must *decide* and notify the facility administrator in writing within thirty (30) calendar days of the TSE Council meeting during which the waiver decision is made. ()

08. Waiver Conditions. When a waiver is granted, the TSE Council must: ()

a. Specify the terms and conditions of the waiver; ()

b. Specify the duration of the waiver; duration will not exceed the designation period for that center or three (3) years, whichever is shorter; and ()

c. Require the submission of progress reports from the center that was granted a waiver. ()

09. Waiver Renewal. A center that plans to maintain a waiver beyond its expiration must submit a new waiver application to the TSE Council no less than three (3) months prior to the expiration of the waiver. ()

10. Waiver Revocation. The TSE Council may revoke or suspend a waiver when it determines: ()

a. That continuation of the waiver jeopardizes the health, safety, or welfare of the patients; ()

b. The applicant has provided false or misleading information in the waiver application; ()

c. The applicant has failed to comply with conditions of the waiver; or ()

d. That a change in federal or state law prohibits continuation of the waiver. ()

11. Notification and Appeal. When the TSE Council denies, revokes, or suspends a waiver, the TSE Council must provide the center with a written notification of the action and the basis for the action. The notice will inform the facility of the right to appeal and the *appeal* procedure under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." Notification will be made in writing within thirty (30) calendar days of the TSE Council meeting during which the appeal decision is made. ()

271. -- 279. (RESERVED)

280. DENIAL AND MODIFICATION.

01. Denial. The TSE Council may deny an initial or renewal application for a center's designation when a center: ()

a. Does not meet the criteria for designation required in these rules; ()

b. Application or accompanying documents contain false statements of material facts; ()

c. Refuses to allow any part of a site survey; ()

d. Fails to comply with or to successfully complete a plan of correction, or ()

e. Is substantially *noncompliant* with any TSE rules. ()

02. Modification. When a center fails to meet the criteria at the level of designation for which it applied or opts to surrender its designation, the TSE Council may recommend a designation at a lesser level described in Section 290 of these rules, or a complete revocation of state designation. This action, unless agreed to by the applicant, will represent a denial of the application. ()

03. Notification and Appeal. When the TSE Council denies an application for designation, the TSE Council must provide the center with a written notification of the denial and the basis for the denial. The notice will inform the facility of the right to appeal and the *appeal* procedure under IDAPA 16.05.03, "Contested Case

Proceedings and Declaratory Rulings.” ()

281. -- 284. (RESERVED)

285. REVOCATION AND SUSPENSION.

01. Revocation. The TSE Council may revoke the designation of a center or a waiver when an owner, officer, director, manager, or other employee: ()

a. Fails or refuses to comply with the provisions of these rules; ()

b. Fails to make annual designation fee payment for those facilities paying yearly; ()

c. Makes a false statement of material fact about the center’s capabilities or other pertinent circumstances under investigation for any purposes connected with these rules; ()

d. Prevents, interferes with, or attempts to impede in any way, the work of a TSE Council *representative* in implementing or enforcing these rules; ()

e. Falsely advertises, or in any way misrepresents the facility’s ability to care for patients based on its designation status; ()

f. Is substantially *noncompliant* with these rules and has not rectified such noncompliance; ()

g. Fails to provide reports required by the Idaho TSE Registry or the Department in a timely and complete fashion; or ()

h. Fails to comply with or complete a plan of correction in the time or manner specified. ()

02. Suspension. The TSE Council may suspend a center’s designation or waiver when it finds, after investigation, that the center has engaged in a deliberate and willful violation of these rules, or that the public’s health, safety, or welfare is endangered. ()

03. Notification and Appeal. When the TSE Council revokes or suspends a center’s designation or waiver, it must provide the center with a written notification of the action and the basis for the action. The notice will inform the center of the right to appeal and the *appeal* procedure under IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” ()

286. -- 289. (RESERVED)

290. DESIGNATION AT A LESSER LEVEL.

01. Inability to Meet Criteria. The TSE Council may opt to redesignate a center at a lesser level due to the center’s inability to meet current designation criteria, without regard to any waiver previously granted. ()

02. Notification and Appeal. When the TSE Council decides to redesignate a center, it must provide the center with a written notification of the action and the basis for the action. The notice will inform the center of the right to appeal and the *appeal* procedure under IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” ()

291. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.19 – CERTIFIED FAMILY HOMES

DOCKET NO. 16-0319-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 39-3505 and 56-1005, Idaho Code.

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

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule language.

Changes to text being made at this pending stage are to clarify the proposed language, eliminate obsolete language, and streamline rule text.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, [Vol. 22-9, pages 51 through 91](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 56-264 and 56-1007, Idaho Code. There are no additional changes to the application and certification fees in this chapter of rule.

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 is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Steven L. Millward at (208) 334-0706.

DATED this 7th day of November, 2022.

Trinette Middlebrook and Frank Powell
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 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, 2022.

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

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

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule language.

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

There are two (2) types of fees in this chapter:

- A one-time non-refundable application fee required when applicants are applying to be certified as Certified Family Homes
- A monthly certification fee that Certified Family Homes providers are required to pay the Department; these are billed quarterly

None of the fees in this chapter of rules are being changed.

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 is not anticipated to have any fiscal impact on the State General Fund, or any other known 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 May 4, 2022, Idaho Administrative Bulletin, ([Vol. 22-5, pp. 70-72](#)).

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: The document incorporated by reference in these rules is not being changed.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steven L. Millward at (208) 334-0706.

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, 2022.

DATED this 5th day of August, 2022.

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 16-0319-2201

Substantive changes have been made in the pending rule.

***Italicized red text* indicates changes between the text of the proposed rule as adopted in the pending rule.**

16.03.19 – CERTIFIED FAMILY HOMES

000. LEGAL AUTHORITY.

Sections 56-1005 and 39-3505, Idaho Code, authorize the Idaho Board of Health and Welfare to adopt and enforce rules and standards for Certified Family Homes. Sections 56-264 and 56-1007, Idaho Code, authorize the Department to adopt and develop application and certification criteria, and to charge and collect application and certification fees. Under Sections 56-1002, 56-1003, 56-1004, 56-1004A, 56-1005, and 56-1009, Idaho Code, the Department and the Board of Health and Welfare have prescribed powers and duties to provide for the administration and enforcement of Department programs and rules. ()

001. SCOPE AND EXCEPTIONS.

01. Scope. These rules set the administrative requirements for care providers who are paid to care for an adult living in the care provider’s home, when the adult is elderly or has a developmental disability, mental illness, or physical disability, and needs personal assistance. ()

02. Exceptions. These rules do not apply to the following: ()

a. Individuals who provide only housing, meals, transportation, housekeeping, or recreational and social activities. ()

b. Health facilities defined by Title 39, Chapter 13, Idaho Code. ()

c. Residential assisted living facilities defined by Title 39, Chapter 33, Idaho Code. ()

d. Any arrangement for care in a relative’s home that is not compensated through a publicly funded program. ()

e. Homes 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. Care providers who provide care to both veterans and non-veterans living in a “medical foster home” are not exempt from these rules. ()

03. State Certification to Supersede Local Regulation. These rules supersede any program of any political subdivision of the state that certifies or sets standards for certified family homes. These rules do not supersede any other local regulations. ()

002. INCORPORATION BY REFERENCE.

The Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36 - 2010 ADA Standards for Accessible

Design, is incorporated by reference. The website is http://www.ada.gov/2010ADASTandards_index.htm. ()

003. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Background Check Clearance. The provider, staff, substitute caregivers, and all adults living in the home, except for residents, are required to complete a background check and receive a clearance affiliated with the certified family home program (i.e., Agency ID 1104) under IDAPA 16.05.06, “Criminal History and Background Checks.” ()

02. When Certification Can Be Granted. Prior to certification, all adults living in the home, except for residents, must complete the background check and receive a clearance. ()

03. New Adults in the Home After Certification. An adult who plans to live in the home must, prior to moving, complete a self-declaration form, be fingerprinted, and not have any designated crimes under IDAPA 16.05.06, “Criminal History and Background Checks.” ()

04. Visitors. No unsupervised contact with residents unless the visitor first clears a background check. ()

05. Minor Child Turning Eighteen. A minor child turning eighteen (18) and living in the home must complete a self-declaration form, be fingerprinted, and not have any designated crimes under IDAPA 16.05.06, “Criminal History and Background Checks,” within thirty (30) days following the month of their eighteenth birthday. ()

06. Substitute Caregivers and Staff. Any staff *or* substitute caregiver must complete a self-declaration form, be fingerprinted, and not have any designated crimes under IDAPA 16.05.06, “Criminal History and Background Checks,” prior to any unsupervised contact with the resident. ()

07. Renewal of Clearance. *The Department can require a new background check at any time.* Renewed clearance from the Department must also be obtained as follows: ()

a. Every five (5) years through the first fifteen (15) consecutive years, except as noted below, then every ten (10) years; ()

b. For adults continuously affiliated (i.e., holding the certificate, living in, or providing substitute care) for at least five (5) years with an existing CFH in operation on or before July 1, 2015, who renewed their clearance after July 1, 2020, a second renewal is needed during the fifth year after the previous clearance, then every ten (10) years; or ()

c. For adults continuously affiliated for at least fifteen (15) years with an existing CFH in operation on or before July 1, 2005, who received clearance after July 1, 2020, a renewed clearance is needed every ten (10) years. ()

010. DEFINITIONS AND ABBREVIATIONS.

The following definitions apply, in addition to the terms defined under Section 39-3502, Idaho Code: ()

01. Alternate Caregiver. A CFH provider approved by the Department to care for a resident from another CFH for up to thirty (30) consecutive days when the original provider is temporarily absent or unable to care for the resident. ()

02. Certificate. A permit issued by the Department to operate a CFH. ()

03. Certified Family Home (CFH). Hereafter referred to as “CFH” or “the home.” ()

04. Certified Family Home (CFH) Requirements. The requirements under which CFHs must operate

are these rules and the provisions of Title 39, Chapter 35, Idaho Code. ()

05. Critical Incident. Any actual or alleged event or situation that creates a significant risk of substantial or serious harm to the physical or mental health, safety, or well-being of a resident. ()

06. Healthcare Professional. An individual licensed to provide healthcare within their respective discipline and scope of practice. ()

07. Immediate Jeopardy. An immediate or substantial danger to a resident. ()

08. Incident. An actual or alleged event or situation that impacts or has the potential to impact the resident's health or safety, but does not rise to the level of a critical incident. ()

09. Incidental Supervision. Supervision of the resident by a provider-approved, responsible adult not including care services such as medication management, personal assistance, managing resident funds, etc. ()

10. Instrumental Activities of Daily Living. The performance of secondary level activities that enable a person to live independently in the community, including preparing meals, accessing transportation, shopping, laundry, money management, housework, medication management, using tools and technology, and other associated tasks. ()

11. Level of Care. A categorical assessment of the resident's functional ability in any given activity of daily living, instrumental activity of daily living or self-preservation, and the degree of care required in that area to sustain the resident in a daily living environment. ()

12. Plan of Service. The generic term used in these rules to refer to the Negotiated Service Agreement, Personal Care Plan, Plan of Care, Individual Support Plan, Support and Spending Plan, or any other comprehensive service plan. ()

13. Primary Residence. A person's place of permanent domicile or residence, to which the person intends to return after any temporary absence. The residence in which a person stays for at least thirty (30) days in any consecutive sixty (60) day period. ()

14. PRN (Pro Re Nata). An abbreviation meaning "when necessary," allowing prescribed medication or treatment to be given as needed. ()

15. Relative. A person related by birth, adoption, or marriage to the third degree, including spouses, parents, children, siblings, grandparents, grandchildren, aunts, uncles, nephews, nieces, great-grandparents, great-grandchildren, great-aunts, great-uncles, and first cousins. ()

16. Staff. The provider, or a person retained by the provider to assist with maintaining the home and caring for residents. A full-time staff works at least forty (40) hours per week for the CFH. ()

17. Variance. A temporary exception not exceeding twelve (12) months issued by the Department to a CFH allowing noncompliance with a specific requirement of these rules when the provider shows good cause for the exception and the variance does not endanger any resident's health or safety. ()

18. Visitor. A guest of a household member who is temporarily visiting the home for thirty (30) consecutive days or less. ()

19. Vulnerable Adult. A person eighteen (18) years of age or older who seems unable to protect themselves from abuse, neglect, or exploitation due to the effects of advancing age, mental illness, developmental or physical disability, or other chronic health condition. ()

20. Waiver. A permanent exception issued by the Department to a CFH allowing noncompliance with a specific requirement of these rules when the provider shows good cause for the exception and the waiver does not endanger any resident's health or safety. ()

012. -- 099. (RESERVED)

100. CERTIFICATION REQUIREMENTS.

An individual is required to obtain certification to operate a CFH under Section 39-3512, Idaho Code. ()

01. Certification Limitations. The Department cannot certify or maintain the certification of any individual who: ()

a. Charges room or board to any person who is not a resident, full-time staff, or a relative under these rules. A variance may be granted by the Department under Section 39-3505(3), Idaho Code. ()

b. Holds a current license for a children's foster home, unless a variance is granted by the Department under Section 39-3505(4), Idaho Code. ()

c. Is appointed, is a relative of, or resides in the home with the legal guardian of the resident, except if any of the aforementioned is a relative of the resident. A variance may be granted by the Department when it is determined the guardianship is in the best interest of the resident. ()

d. Is absent from the CFH for more than thirty (30) consecutive days when the home has an admitted resident. ()

e. Has a primary residence somewhere other than the CFH. ()

02. Certification Study. Following receipt of an acceptable application and other required documents, the Department will begin a certification study within thirty (30) days. The certification study will serve as the basis for issuing a certificate. The study will include the following: ()

a. A review of all material submitted; ()

b. A home inspection; ()

c. An interview with the applicant; ()

d. An interview with the applicant's relatives or other household members, when deemed necessary; ()

e. A review of the care needs of other household members to evaluate the ability of the applicant to meet the needs of the resident; ()

f. A medical or psychological examination of the applicant or staff, when the Department determines it is necessary, including a statement from a healthcare professional that the individual has the ability to adequately care for the resident and ensure a safe living environment; ()

g. Proof that the applicant or their spouse has a legal right to occupy the home and has control of the premises (e.g., a lease, deed, or mortgage for the property); and ()

h. Other information necessary to verify that the home complies with these rules. ()

03. Provider Training Requirements. As a condition of initial certification, the applicant must receive training in the following areas: ()

a. Resident rights; ()

b. Certification in first aid and adult Cardio-Pulmonary Resuscitation (CPR) which must be kept current and include hands-on skills training; ()

- c. Emergency procedures; ()
- d. Fire safety, including use and maintenance of fire extinguishers, smoke detectors, and carbon monoxide detectors; ()
- e. Unless a licensed practical nurse, registered nurse, physician's assistant, or medical doctor, completion of a Department-approved medications course through an Idaho technical college; and ()
- f. Complaint investigation and inspection procedures. ()

101. APPLICATION FOR CERTIFICATION.

The applicant must apply for certification on Department forms and submit the following to the Department: ()

- 01. Completed Application Signed by Applicant.** ()
- 02. Statement to Comply.** A written statement that the applicant has thoroughly read and reviewed all CFH requirements, and is prepared to comply. ()
- 03. Statement Disclosing Revocation or Disciplinary Actions.** A written statement *disclosing any past, current, or pending revocation, or other disciplinary action, against the applicant as a care provider in any jurisdiction.* ()
- 04. Electrical Inspection.** A written statement from a licensed electrician or the local/state electrical inspector within the past twelve (12) months indicating that all electrical installations in the home comply with applicable local code and are in good working order. ()
- 05. Plumbing Inspection.** A written statement from a licensed plumber within the last twelve (12) months that the water supply and sewage disposal system in the home are in good working order. ()
- 06. Heating and Air Conditioning Inspection.** A written statement within the last twelve (12) months by a person licensed to service heating and cooling systems that these systems in the applicant's home are in good operating condition. ()
- 07. Proof of Insurance.** Proof of homeowner's or renter's insurance on the applicant's home. For continued certification, the provider must ensure that insurance is kept current. ()
- 08. List of Individuals Living in the Home.** A list of all individuals living in the home at the time of application and their relationship to the applicant. ()
- 09. Other Information as Requested.** Other information that may be requested by the Department for the proper administration and enforcement of the CFH requirements. ()

102. TERMINATION OF APPLICATION.

- 01. Failure to Cooperate.** Failure of the applicant to cooperate with the Department in the application process will result in the termination of the application. Failure to cooperate means the applicant does not submit in the form requested or within a reasonable timeframe as determined by the Department: ()
 - a. Information under Section 101 of these rules; or ()
 - b. Payment of the application fee under Section 109 of these rules. ()
- 02. Reapplication.** An applicant whose application has been terminated may reapply for certification. ()

103. -- 108. (RESERVED)

109. APPLICATION AND CERTIFICATION FEES.

01. Application Fee. An applicant is required to pay the Department a non-refundable application fee of one hundred fifty (\$150) dollars for each of the following: ()

- a. As part of the initial application to become a CFH care provider; ()
- b. As part of any reapplication after the initial application is terminated, withdrawn, or the CFH closed; or ()
- c. When the home will be operated by a new care provider. ()

02. Certification Fees. The provider is required to pay to the Department a certification fee of twenty-five (\$25) dollars per month while certified. This amount is billed to the provider every three (3) months, and is due and payable within thirty (30) days of the invoice date. ()

a. Failure of the provider to pay certification fees when due may cause the Department to take enforcement action under Section 913 of these rules. ()

b. Monthly certification fees paid in advance for the CFH will be refunded when the provider operates the home for less than fifteen (15) days during any given month for which payment was received by the Department. An advance payment refund may be issued when the provider voluntarily closes the home as provided in Section 114 of these rules, or involuntarily closes the home due to an enforcement remedy imposed by the Department. ()

110. ISSUANCE OF CERTIFICATE.

The Department will issue a certificate when certification requirements are met. Each certificate must be available at the home upon request. ()

01. Full Certificate. The Department will issue a full certificate upon a finding that the CFH is compliant with CFH requirements. A full certificate is effective for no more than twelve (12) months from the issue date. ()

02. Temporary Certificate. The Department may issue a temporary certificate to allow time for the provider to meet all certification requirements without a lapse in certification when the provider plans to relocate to a residence within the state and continue operation of a CFH. A temporary certificate is effective for no more than sixty (60) days from the issue date. ()

a. At least thirty (30) days prior to moving into a new residence, the provider must notify the certifying agent for the region in which the new home will be located. Prior to moving into the new residence, the provider must submit to the certifying agent the following: ()

- i. A completed application form under Section 101 of these rules; ()
- ii. Copies of all inspection reports for the new residence under Section 101 of these rules; and ()
- iii. Other information requested by the Department to ensure the new residence is appropriate for use as a CFH and safe for occupation. ()

b. The Department will issue a temporary certificate upon review and approval of the information required under Subsection 110.02 of this rule. ()

c. The provider must coordinate with the certifying agent an inspection of the new residence to occur prior to the expiration of the temporary certificate and be prepared to demonstrate compliance with CFH requirements during the home inspection. ()

d. The Department will issue a full certificate as described in Subsection 110.01 of this rule when it determines that the home complies with CFH requirements. ()

111. RENEWAL OF CERTIFICATE.

01. Home Inspection. A home inspection by a certifying agent is required the year after the initial certification study and at least every twenty-four (24) months thereafter. The home inspection will consist of the elements of the certification study under Section 100 of these rules. ()

02. Desk Review. When the Department determines a home inspection is not required to renew the certificate, the Department may conduct a desk review by written notification to the provider. The provider must submit copies of the following documentation to the certifying agent at least thirty (30) days prior to the expiration of the certificate: ()

- a.** Current first aid and adult CPR certifications; ()
- b.** Private well water testing report, as applicable; ()
- c.** Updated septic system inspection or pumping report, as applicable, when the previous inspection is older than five (5) years; ()
- d.** Annual fire extinguisher inspection reports, or sales receipts for fire extinguishers that comply with Section 600 of these rules that are less than twelve (12) months old; ()
- e.** Logs of smoke and carbon monoxide detector tests and battery replacement, fire extinguisher examinations, and emergency plan reviews; ()
- f.** Emergency drill summaries or recordings; ()
- g.** Training logs; ()
- h.** Proof of current homeowner's or renter's insurance; ()
- i.** Requests for renewed exceptions that meet the requirements in Sections 120 through 140 of these rules as applicable; and ()
- j.** Other information as requested by the Department. ()

112. DENIAL OF APPLICATION FOR CERTIFICATE.

01. Causes For Denial. Causes for denial of an application for issuance of a certificate, besides those under Section 39-3523, Idaho Code, include the following: ()

- a.** The applicant or provider has willfully misrepresented or omitted information on the application or other submitted documents; ()
- b.** A required background check results in an Unconditional Denial; ()
- c.** The applicant or provider has been denied or has had revoked any child care (including foster home) or health facility license, residential assisted living facility license, or CFH certificate; ()
- d.** The applicant or provider has been found to have operated a health facility, residential assisted living facility, or CFH without a license or certificate; ()
- e.** A court has ordered that the applicant or provider must not operate a health facility, residential assisted living facility, or CFH; ()
- f.** The applicant or provider is directly under the control or influence of any person who is described in Subsection 112.01 of this rule. ()

02. Notice of Denial. Immediately upon denial of an application, the Department will provide notice by certified mail or by personal service, including the reason(s) for the denial and instructions regarding appealing the decision. ()

113. OPERATING WITHOUT A CERTIFICATE.

01. Operating Without Certificate. A person found to be operating as a CFH as described under Section 39-3512, Idaho Code, without first obtaining a certificate may be referred for criminal prosecution under Section 39-3528, Idaho Code. ()

02. Placement or Transfer of Resident. Upon discovery of such a person described in Subsection 113.01 of this rule, the Department may transfer residents to the appropriate placements when: ()

a. There is an immediate threat to any resident's health and safety; or ()

b. The individual operating the home does not cooperate with the Department to apply for certification, meet certification standards, and obtain a valid certificate. ()

114. VOLUNTARY CLOSURE.

When choosing to voluntarily close a CFH, the provider must give written notice at least thirty (30) days in advance to the residents, or the residents' representatives when applicable, and the certifying agent in the region where the home is located. The notification must include the following: ()

01. Date of Notification. ()

02. Provider's Certificate. A copy of the certificate, or information from the certificate that includes: ()

a. The provider's name; and ()

b. Address of the home; or ()

c. Certificate number. ()

03. Closure Date. The written notice must include the planned closure date. The Department will not refund or prorate prepaid certification fees on retroactive closures. ()

04. Discharge Plans. If applicable, discharge plans for current residents must accompany the written notice to the certifying agent. ()

115. REQUIRED ONGOING TRAINING.

The provider must document a minimum of eight (8) hours per year of ongoing, relevant training. ()

01. Initial Provider Training. The initial provider training required in Section 100 of these rules satisfies the eight (8) hour training requirement for the first year of certification. ()

02. Content of Training. Relevant training includes any topic that maintains or expands caregiving skills or safety practices in the home, such as topics of supervision, services, and care to vulnerable adults. ()

a. At least half of the required ongoing training hours each year must be devoted to the specific conditions, diagnoses and needs of admitted residents, when residents are admitted. ()

b. The remaining hours may be devoted to general topics related to caregiving, health, or safety. ()

03. Documentation of Training. The provider must document ongoing training to include the

- following: ()
- a. Topic or title of the training with a brief description; ()
 - b. Source of training, including the name of the instructor or author; ()
 - c. Number of hours the provider received instruction; ()
 - d. Whether the training was resident-specific or a general topic; and ()
 - e. Date of the training. ()

116. -- 119. (RESERVED)

120. EXCEPTIONS.

The Department may grant an individual provider an exception to a specific standard in these rules under Section 39-3554, Idaho Code. Such an exception may be in the form of a permanent waiver or a temporary variance effective for up to twelve (12) months. ()

01. Written Request. The provider must submit a written request for an exception to the regional certifying agent where the home is located prior to any planned noncompliance with any rule under these rules. The appropriateness of granting an exception is determined by the Department. The request must include the following: ()

- a. Reference to the Section of these rules for which the exception is requested; ()
- b. Reasons that show good cause for granting the exception, including any extenuating circumstances and any compensating factors or conditions that may have bearing on the exception, such as additional floor space or additional staffing; and ()
- c. A signed statement from the provider that assures resident health and safety will not be jeopardized if the exception is granted, including an agreement to implement any special conditions the Department may require. ()

02. Special Conditions. When granting an exception, the Department may require the provider to meet special conditions while the exception is in effect to ensure the health and safety of residents. ()

03. Variance Renewal. To renew a variance, the provider must submit a written request to the regional certifying agent where the home is located at least thirty (30) days prior to expiration of the variance. The request for renewal must include the information required in Subsection 120.01 of this rule. The appropriateness of renewing a variance is determined by the Department. ()

04. Exception Not Transferable. An exception granted under Sections 120 through 140 of these rules is not transferable to any other provider, home, or resident. ()

121. REVOKING AN EXCEPTION.

01. Causes for Revocation. The Department may revoke any exception granted under Sections 120 through 140 of these rules when: ()

- a. The provider has not met the special conditions associated with granting the exception; ()
- b. Conditions within the home have changed such that an exception is no longer prudent; or ()
- c. The health and safety of residents have otherwise been compromised. ()

02. Written Notice. The Department will provide written notice to the provider when an exception is

revoked, including the reason for the revocation. ()

03. Time Frame to Comply. When there is a threat to the health or safety of any person, the provider must immediately upon notification comply with the rule for which the exception is revoked. When no such threat exists, compliance must occur within thirty (30) days of notification. ()

122. -- 129. (RESERVED)

130. NURSING FACILITY LEVEL OF CARE VARIANCE.

01. Request for Variance. A CFH may care for one (1) resident who requires nursing facility level of care as defined in Section 39-1301(b), Idaho Code, without obtaining a variance. A provider seeking to care for two (2) or more residents who require nursing facility level of care must request a variance in writing from the Department as required in Section 120 of these rules. ()

02. Conditions for Variance. The Department may issue a written variance permitting the arrangement when: ()

a. Each of the residents or their representative provides a written statement to the Department requesting the arrangement; ()

b. Each of the residents or their representative making the request is competent, informed, and has not been coerced; and ()

c. The Department finds the arrangement safe and effective. ()

131. -- 139. (RESERVED)

140. VARIANCE TO THE TWO RESIDENT LIMIT.

A CFH may admit or retain a maximum of two (2) residents without first obtaining a variance from the Department. Exceeding that limit requires a variance from the Department. ()

01. Application for Variance. The provider must apply on forms provided by the Department for a variance to the two (2) resident limit to care for three (3) or four (4) residents on a per resident basis prior to any new admissions. The application must be submitted to the certifying agent where the home is located. The Department determines the appropriateness of granting the variance. ()

02. Criteria for Determination. The Department will determine if safe and appropriate care can be provided based on residents' needs. The Department will consider the following factors in making its determination: ()

a. Each current or prospective resident's physical, mental, and behavioral status and history; ()

b. The household composition including the number of adults, children, and other family members requiring care and their care needs from the provider; ()

c. The training, education, and experience of the provider to meet each resident's needs; ()

d. Potential barriers that might limit egress from and ingress to the home; ()

e. The number and qualifications of staff to meet the needs of residents and others requiring care in the home; ()

f. The desires of the prospective and current residents or their representatives, including approval of roommate, if applicable; ()

g. The individual and collective hours of care needed by the residents; and ()

h. The physical layout of the home and the square footage available to meet the space requirements of all persons living in the home. ()

03. Other Employment. A provider who is granted a variance to admit three (3) or four (4) residents must not have other gainful employment outside the home unless staff are immediately able to consult with the provider about resident needs as they arise. ()

04. Additional Training. A provider who is granted a variance to admit three (3) or four (4) residents must obtain additional training to meet the needs of the residents as follows: ()

a. A provider who cares for three (3) residents must obtain a total of twelve (12) hours per year of ongoing relevant training under Section 115 of these rules. ()

b. A provider who cares for four (4) residents must obtain a total of sixteen (16) hours per year of ongoing relevant training under Section 115 of these rules. ()

c. When caring for three (3) or four (4) residents for only part of the year, additional training hours above those hours required in Section 115 of these rules are prorated by month. A resident is counted towards the home's resident census when the admission agreement is in effect for fifteen (15) days or more during the month. The following table shows the additional prorated training requirements to be added to the base training hours:

TABLE 140.04 - PRORATED ADDITIONAL TRAINING HOURS FOR PROVIDERS WHO EXCEED THE TWO-RESIDENT LIMIT

Months	3 Residents	4 Residents
1	20 minutes	40 minutes
2	40 minutes	1 hour and 20 minutes
3	1 hour	2 hours
4	1 hour and 20 minutes	2 hours and 40 minutes
5	1 hour and 40 minutes	3 hours and 20 minutes
6	2 hours	4 hours
7	2 hours and 20 minutes	4 hours and 40 minutes
8	2 hours and 40 minutes	5 hours and 20 minutes
9	3 hours	6 hours
10	3 hours and 20 minutes	6 hours and 40 minutes
11	3 hours and 40 minutes	7 hours and 20 minutes

()

05. Reassessment of Variance. A variance to care for more than two (2) residents must be reassessed at least annually and when either of the following occurs: ()

a. Each time the provider applies to the Department for approval of a prospective third or fourth resident admission; or ()

b. When there is a significant change in any of the factors specified in Subsection 140.02 of this rule. ()

06. Annual Home Inspection. A CFH with a variance to care for more than two (2) residents must

have a home inspection by a certifying agent at least annually. ()

07. Shared Sleeping Rooms. In addition to the requirements in Section 700 of these rules, the provider must not house more than two (2) residents in any one (1) sleeping room. ()

08. Fire Drill Frequency. A provider who is granted a variance to admit three (3) or four (4) residents must conduct fire drills as described in Section 600 of these rules, except the frequency of the fire drills must be at least monthly. ()

141. -- 149. (RESERVED)

150. INSPECTIONS OF HOMES.

The Department will inspect each CFH at least every twenty-four (24) months, calculated from the first month of the most recent certification. Inspections may occur more frequently as the Department deems necessary. That determination may consider the results of previous inspections, history of compliance with rules, and complaints. ()

01. Notice of Inspection. All inspections, except for the initial certification study, may be made unannounced and without prior notice. ()

02. Inspection by Certifying Agent. The Department may use the services of any qualified person or organization, either public or private, to examine and inspect any home requesting certification. The inspector has the authority to have full access to the home and the authority to: ()

a. Examine quality of care and service delivery; ()

b. Examine home records, resident records, and any records or documents pertaining to any financial transactions between residents and the home, including resident accounts; ()

c. Examine the physical premises, including the condition of the home, grounds and equipment, food service, water supply, sanitation, maintenance, and housekeeping practices; ()

d. Examine any other areas necessary to determine compliance with the CFH requirements; ()

e. Interview the provider, any adults living in the home, the resident and the resident's relatives, substitute caregivers, persons who provide incidental supervision, and any other person who is familiar with the home or its operation. Interviews are conducted privately unless otherwise specified by the person being interviewed or that person's legal guardian, except when the legal guardian is an alleged perpetrator in an allegation being investigated in connection with the interview; and ()

f. Inspect the entire home, including the personal living quarters of household members, to check for inappropriate storage of combustibles, faulty wiring, or other conditions that may have a direct impact on the operation of the home. The provider, staff, substitute caregiver, or any other adult living in the home may accompany the certifying agent. ()

151. VIOLATIONS.

When an investigation or inspection finds violations of the CFH requirements, the Department will notify the provider in writing within thirty (30) days of the completed inspection or investigation. ()

01. Technical Assistance. When the Department determines a violation does not pose a health or safety risk to residents or is not otherwise a core issue, and the non-compliant practice was due to the provider's misunderstanding of a standard, the Department may give technical assistance to the provider under Section 39-3527, Idaho Code. When given written notice of technical assistance, the provider must correct the violation within thirty (30) days of the notice. ()

02. Statement of Deficiencies. When the Department determines a formal citation is necessary to enforce compliance with a standard, the Department may issue the provider a statement of deficiencies. The

statement of deficiencies will include the findings of the investigation or inspection and any rules or statutes the home was found to have violated. ()

03. Plan of Correction. When a statement of deficiencies is issued, the provider must develop a plan of correction and submit it to the Department for review and approval. ()

a. Depending on the severity of the deficiency, the provider may be given up to fourteen (14) calendar days to submit a written plan of correction to the regional certifying agent where the home is located. ()

b. An acceptable plan of correction includes: ()

i. How each deficiency was corrected or how it will be corrected; ()

ii. What steps have been taken to assure that the deficiency does not reoccur; ()

iii. Acceptable time frames for correction of the deficiency not to exceed thirty (30) days from the date of the Department's written notice; and ()

iv. Signature of the provider or written acknowledgment that the provider agrees to implement the plan of correction. ()

c. Follow-up inspections may be conducted to determine whether corrections to deficiencies have been made according to the Department-approved plan of correction. ()

04. Disclosure of Deficiencies. A statement of deficiencies, if issued, for each inspection or investigation of a current provider, including the approved plan of correction, will be made available to the public upon written request to the Department under Title 74, Chapter 1, Idaho Code. ()

152. -- 159. (RESERVED)

160. INVESTIGATIONS.

01. Complaints. ()

a. Any person who believes that staff have committed a violation of the CFH requirements may report a complaint to the Department. ()

b. In addition to its own investigation, the Department will also refer any complaint alleging abuse, neglect, or exploitation of a vulnerable adult to adult protective services according to Section 39-5303, Idaho Code, for potential criminal investigation. ()

02. Critical Incidents. The Department will investigate or cause to be investigated any reported critical incident that indicates a possible violation of CFH requirements. ()

03. Investigation Method. The nature of the alleged violation will determine the method used to investigate the report. *Interviews will be conducted according to Subsection 150.02.e. of these rules.* Onsite investigations at the home can be unannounced and without prior notice. ()

04. Written Report. Within thirty (30) days following completion of an investigation, the Department will provide a written report, including findings of the investigation, to the provider and any named complainant, if applicable. ()

05. Public Disclosure. The Department will not publicly disclose information or findings from an investigation so as to identify the complainant except as permitted under Section 74-105(16), Idaho Code, or individual residents except in an administrative or judicial proceeding. ()

161. -- 169. (RESERVED)

170. MINIMUM STANDARDS OF CARE.

The provider must adequately care for each resident as follows: ()

01. Plan of Service. Ensure services are provided to meet the terms of the resident's plan of service as described in Section 250 of these rules. ()

02. Supervision. Ensure the resident receives appropriate and adequate supervision under the resident's plan of service while in the care of CFH staff. ()

03. Daily Living Activities. Ensure assistance is provided to the resident at the level of care indicated on the resident's plan of service in the areas of activities of daily living and instrumental activities of daily living. ()

04. Medication Management. Ensure assistance and monitoring of medications is provided as described in Sections 400 through 402 of these rules, as applicable. ()

05. Emergency Services. Ensure immediate and appropriate interventions on behalf of the resident are provided in response to an emergency, including the following: ()

a. Developing emergency plans as described in Section 600 of these rules and executing those plans when necessary; ()

b. Evacuating the resident from the home; ()

c. Providing first aid to the resident when seriously injured; ()

d. Administering CPR to the resident unless the resident has an order not to resuscitate; and ()

e. Contacting 9-1-1 for first responder services when necessary for the protection of the resident. ()

06. Supportive Services. Coordinate paid services for the resident outside the home, including: ()

a. Medical appointments; ()

b. Dental appointments; ()

c. Other services in the community as identified in the plan of service or reasonably requested by the resident; and ()

d. Arrange transportation to and from the service location. ()

07. Resident Rights. Protect the resident's rights as listed under Section 200 of these rules and Section 39-3516, Idaho Code. ()

08. Safe Living Environment. Provide a physical living environment that complies with Sections 500 through 710 of these rules. ()

171. -- 173. (RESERVED)

174. ACTIVITIES AND COMMUNITY INTEGRATION.

Section 39-3501, Idaho Code, requires that a CFH provide a homelike, family-styled living environment with a focus on integrated community living. The provider must offer the following: ()

01. Activities. As reasonably reflecting the interests of the resident, recreational activities, participation in social functions, and daily activities. ()

02. Transportation. Arrangement of transportation to and from community, recreational, and religious activities within twenty-five (25) miles of the home when requested by the resident at least twenty-four (24) hours in advance. ()

175. ROOM AND BOARD.

The home must provide room, utilities, and three (3) daily meals to the resident. The following are included in the charge for room and board: ()

01. Sleeping Room. A sleeping room meeting the requirements of Section 700 of these rules, and, when requested by the resident, equipped with a dresser and chair in good repair. ()

02. Bed. A bed that is at least thirty-six (36) inches wide. Roll-away type beds, cots, folding beds, or double bunks must not be used unless requested by the resident. A clean and comfortable mattress, bedspread, sheets and pillow cases, and pillow that are standard for the size of the bed must also be included. The bed, bedding, and mattress must be kept in good repair. ()

03. Monitoring or Communication System. A monitoring or communication system, when necessary due to the size or design of the home, or the needs of the resident. The provider must hold a written agreement with the resident or resident's representative prior to using a monitoring system that may violate the resident's right to privacy. ()

04. Secure Storage. On request, a lockable storage cabinet or drawer for personal items for each resident. ()

05. Bathroom. Access to bathing and toilet facilities meeting the requirements of Section 700 of these rules. ()

06. Common Areas. Access to common living areas, including: ()

a. A living room or family room that contains adequate lighting for activities, side or coffee tables, comfortable chairs or sofas, and basic television: ()

b. A dining area containing a table and chairs; and ()

c. A kitchen with a sink, oven, refrigerator, and counter space. ()

07. Supplies. Bath and hand towels, wash cloths, a reasonable supply of soap, shampoo, toilet paper, and facial tissue, and first aid supplies. ()

08. Housekeeping Service. Housekeeping and maintenance meeting the requirements in Section 500 of these rules, including laundry services. ()

09. Water. Potable water meeting the requirements of Section 500 of these rules. ()

10. Sewer. A sewage disposal system meeting the requirements of Section 500 of these rules. ()

11. Trash. Disposal of garbage meeting the requirements of Section 500 of these rules. ()

12. Heating and Cooling. Sufficient heating and cooling meeting the requirements of Section 700 of these rules. ()

13. Electricity. Sufficient electricity to power common household and personal devices. ()

14. Telecommunication. Access to a telephone or cell phone with unlimited local calls throughout the day, including night hours, meeting the requirements of Section 600 of these rules. ()

15. Meals. Breakfast, lunch, and dinner offered each day. ()

a. Food must be prepared in a safe and sanitary method that conserves nutritional value, flavor, and appearance when prepared by the provider or other member of the household. ()

b. Meals offered by the home must meet the dietary requirements or restrictions of the resident when so ordered by a healthcare professional. ()

c. Food must be handled and stored safely. ()

176. -- 179. (RESERVED)

180. HOURLY ADULT CARE.

Hourly adult care (adult day health) may be offered in a CFH when the provider implements a policy and procedure including: ()

01. Medicaid Provider Agreement. Each element under the Medicaid Provider Agreement Additional Terms - Adult Day Care (Adult Day Health). ()

02. Records. Maintenance of legible records identifying: ()

a. The rate charged by the provider for hourly adult care services if the participant is private pay; ()

b. On a per day basis, when hourly adult care services were provided in the home, the name of each participant and resident who received services, their times of arrival to and departure from the home and the names of staff who provided services and their arrival and departure times. ()

03. Fire and Life Safety. ()

a. Review of emergency preparedness plans under Section 600 of these rules with the individual who completed the enrollment contract and provision of a written copy of the plans to that individual; and ()

c. Conduct of emergency drills under Section 600 of these rules, except that the frequency of the drills must be at least monthly. ()

181. -- 199. (RESERVED)

200. RESIDENT RIGHTS POLICY.

The provider must possess and implement a written policy designed to protect and promote resident rights. In addition to the rights under Section 39-3516, Idaho Code, the resident rights policy must include the following: ()

01. Monitoring Correspondence. The right to send and receive mail unopened, either by postal service, electronically, or by other means, unless the resident's plan of service specifically calls for the provider to monitor the correspondence to protect the resident from abuse or exploitation. ()

02. Image. The right to control staff's use of pictures and videos containing the resident's image. ()

03. Crime-Free Living Environment. The right to a living environment free of illicit drug use or possession, and other criminal activities. ()

04. Freedom From Discrimination. The right to be free from discrimination on the basis of race, color, national origin, sex, religion, age, disability, or veteran status; ()

05. Freedom of Choice. The right to be free from intimidation, manipulation, and coercion. ()

06. Basic Needs Allowance. For each resident whose care is publicly funded, in whole or in part, the right to retain, for personal use, the CFH basic allowance established by IDAPA 16.03.05. "Eligibility for Aid to the Aged, Blind, and Disabled," Section 513. The provider's total monthly charges to a resident receiving public assistance must be limited to ensure the resident retains at least the basic needs allowance. ()

07. Resident Funds and Property. The right to manage personal funds and use personal property, including access to the home. ()

a. The resident has the right to retain and use personal property in their own living area. The provider must ensure, however, the storage and use of these items by the resident does not present a fire or life safety hazard. ()

08. Access to Records, Medications, and Treatments. The right for the resident's healthcare professionals to have reasonable access to the resident's records, medications, and treatments subject to the resident's permission. ()

09. Freedom From Exploitation. The right to be free from exploitation. ()

10. Written Response to Grievance. The right to a written response to any expressed grievance describing how the provider resolved or attempted to resolve the grievance. ()

11. Advance Notice. The right to receive written advance notice at least thirty (30) calendar days prior to non-emergency transfer or discharge unless the transfer or discharge is for a reason under Section 261 of these rules. ()

12. Personal Records. The right to access personal records, including those under Section 270 of these rules. ()

13. Activities. The right to participate in social, religious, and community activities. ()

14. Other CFHs. The right to review a list of other CFHs that may be available in case of transfer. ()

15. File Complaints. The right to file a complaint with the Department under Section 160 of these rules. ()

16. Care of a Personal Nature. The right to refuse routine care of a personal nature from any person whom the resident is uncomfortable receiving such care. ()

17. Formulate Advance Directives. The right to be informed, in writing, regarding the formulation of advance directives under Title 39, Chapter 45, Idaho Code. ()

18. Other Rights. The right to exercise any other rights established by law. ()

201. NOTICE OF RESIDENT RIGHTS.

01. Resident Rights Notice. At the time of admission to the home, the provider must inform the resident or their representative, verbally and in writing, of the home's resident rights policy and supply the resident or their representative a copy of the policy. ()

02. Annual Review of Resident Rights. The provider must review the resident rights policy with the resident or their representative at least annually. ()

03. Documentation of Review. The provider must keep a log of each review of the resident rights policy in the resident's record. The log must include dated signatures from the provider and the resident or the resident's representative acknowledging the review. ()

202. -- 209. (RESERVED)

210. REPORTING REQUIREMENTS.

The provider must report the following to the regional certifying agent where the home is located or appropriate agency or individual: ()

01. Serious Physical Injury or Death. The provider must report to the appropriate law enforcement agency within four (4) hours when there is reasonable cause to believe that abuse, neglect, or sexual assault has resulted in death or serious physical injury jeopardizing the life, health, or safety of a resident under Section 39-5303, Idaho Code. ()

02. Abuse, Neglect, or Exploitation. When the provider has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected, or exploited, the provider must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, under Section 39-5303, Idaho Code. ()

03. Critical Incidents. The provider must notify the certifying agent when a critical incident affects the health or safety of the resident or leads to a change in the resident's condition, including serious illness, accident, elopement, death, or adult protective services or law enforcement contact and investigation. Reporting requirements are as follows: ()

- a. Within twenty-four (24) hours of the resident's death or disappearance; and ()
- b. Within three (3) business days following: ()
 - i. Contact from adult protective services or law enforcement in conjunction with an investigation; ()
 - ii. A visit to an urgent care clinic or emergency room; or ()
 - iii. Admission to a hospital. ()

04. Report of Fire. A written report of each fire incident occurring within the home, for which a fire extinguisher was discharged or 9-1-1 was contacted, must be submitted to the certifying agent within three (3) business days of the occurrence. The report must include: ()

- a. Date of the incident; ()
- b. Origin of the fire; ()
- c. Extent of damage; ()
- d. How and by whom the fire was extinguished; and ()
- e. Injuries or deaths, if any. ()

05. Additional Criminal Convictions. The provider must immediately report to the certifying agent any additional criminal convictions for themselves, staff, any other adult living in the home, or a substitute caregiver. ()

06. Notice of Investigations. The provider must immediately report to the certifying agent when the provider, staff, any other adult living in the home, or a substitute caregiver is charged with or under investigation by law enforcement, adult protection services, or child protection services for: ()

- a. Abuse, neglect, or exploitation of any vulnerable adult or child; ()

- b. Other criminal conduct; or ()
- c. When an adult protection or child protection complaint is substantiated. ()

07. Funds Managed by the Provider for a Deceased Resident. For resident funds managed under Section 275 of these rules, upon the death of the resident, the provider must convey the resident's remaining funds, with a final accounting of those funds, to the individual administering the resident's estate within thirty (30) days. ()

08. Discharge of a Resident. The provider must immediately notify the certifying agent upon the discharge of any resident from the home. ()

211. -- 224. (RESERVED)

225. UNIFORM ASSESSMENT REQUIREMENTS.

01. State Responsibility for Publicly Funded Residents. The Department will assess residents accessing services through a publicly funded program according to uniform criteria developed for that program. ()

02. Provider Responsibility for Private-Pay Residents. The provider will develop, identify, assess, or direct a uniform needs assessment of each private-pay resident. The uniform needs assessment must be: ()

- a. Completed no later than fourteen (14) calendar days after admission; and ()
- b. Reviewed when there is a change in condition, or every twelve (12) months, whichever occurs first. ()

03. Core Elements. The assessment of a private-pay resident must be based on the following: ()

- a. Identification and background information; ()
- b. Medical diagnosis; ()
- c. Medical and health needs; ()
- d. Prescription medications including routes of administration, and any treatments or special diets, if applicable; ()
- e. Historical and current behavior patterns; ()
- f. Cognitive function; ()
- g. Psychosocial and physical needs of the resident; ()
- h. Functional status; and ()
- i. Assessed level of care. ()

04. Results of Assessment. The results of the assessment for both publicly funded and private-pay residents are used to evaluate the provider's ability to meet the resident's needs, and to evaluate whether any special training, licenses, or certificates may be required to care for certain residents. ()

226. -- 249. (RESERVED)

250. PLAN OF SERVICE.

The provider must ensure each resident has a plan of service. The plan must identify the resident, describe the

- services to be offered, and describe how the services will be delivered. ()
- 01. Core Elements.** A resident's plan of service must be based on the resident's: ()
- a. Assessment; ()
 - b. Service needs for activities of daily living; ()
 - c. Need for limited nursing services; ()
 - d. Need for medication assistance; ()
 - e. Frequency of needed services; ()
 - f. Level of care; ()
 - g. Habilitation and training needs; ()
 - h. Behavioral management needs, including identification of situations that trigger dangerous, unlawful, or otherwise problematic behavior, plans to prevent such situations, and coping procedures if triggered; ()
 - i. Healthcare professional's orders; ()
 - j. Admission records; ()
 - k. Supportive services; ()
 - l. Desires and choices, to the greatest extent possible; ()
 - m. Need for supervision, including the degree; ()
 - n. Transfer and discharge needs; and ()
 - o. Other identified needs. ()
- 02. Signature and Approval.** The provider and the resident or the resident's representative must sign and date the plan of service upon its completion, within fourteen (14) days of the resident's admission. ()
- 03. Developing the Plan.** The provider will consult the resident and other individuals identified by the resident in developing the plan of service. Professional staff must be involved in developing the plan if required by another program. ()
- 04. Copy of the Plan.** Signed copies of the plan of service must be placed in the resident's file and given to the resident or the resident's representative, if applicable, no later than fourteen (14) days after admission. ()
- 05. Changes to the Plan.** A record must be made of any changes to the plan. When changes to the plan are made, the resident or resident's representative and the provider must sign and date the updated plan. ()
- 06. Frequency of Review.** The plan of service must be reviewed when the resident experiences a significant change in condition, or at least every twelve (12) months, whichever occurs first. ()
- 07. Date of Regular Review.** The date of the next regularly scheduled review must be documented in the plan of service. ()
- 251. – 259. (RESERVED)**

260. ADMISSIONS.

The provider must only admit or retain residents in the home under Section 39-3507, Idaho Code. ()

01. Department Review. The provider must obtain approval from the Department for each admission prior to the prospective resident moving into the home. The following must be provided to the regional certifying agent where the home is located: ()

a. Name, gender, and date of birth of the prospective resident; ()

b. The contemplated date of admittance of the prospective resident into the home; ()

c. The prospective resident's history and physical from the resident's healthcare professional, conducted within the previous twelve (12) month period and reflecting the resident's current health status. If the resident is private-pay, the documentation must include a statement from the resident's healthcare professional indicating that the resident is appropriate for CFH care; ()

d. A list of the prospective resident's current medications and treatments from their healthcare professional; ()

e. Contact information for the prospective resident's healthcare professionals; ()

f. Contact information for the prospective resident's representative, if applicable; ()

g. The prospective resident's plan of service from another healthcare setting, or any such plan of service conducted for the resident within the previous six (6) months, if one exists, when the resident transfers to the home from another healthcare setting; and ()

h. Other information requested by the Department relevant to the appropriateness of the admission and the provider's ability to provide adequate care. ()

02. Notification. Within five (5) business days of receipt of the documents under Subsection 260.01 of this rule, the Department will notify the provider whether the proposed admission is approved or denied. When verbal notification is given, the Department will provide follow-up written communication to the provider stating the approval or denial within ten (10) business days. ()

03. Emergency Admission. The provider may not accept an emergency admission without prior approval from the Department except under the following conditions: ()

a. The provider may make a conditional admission when the provider reasonably believes the CFH has the ability to provide adequate care to the resident and the request for an emergency placement occurs after normal business hours and the provider is unable to contact the Department for prior approval. The provider must notify the resident or the resident's representative that the admission is conditional upon Department approval. ()

b. The provider must notify the regional certifying agent where the home is located by the next business day when a conditional emergency admission is made. ()

c. The provider must follow the regular admission process under Subsection 260.01 of this rule within two (2) business days of making a conditional emergency admission. The Department may deny the placement and require the provider to immediately transfer the resident when the Department has reasonable cause to believe the provider lacks the ability to provide adequate care to the resident. ()

04. Admission Agreement. At the time of admission to the CFH, the provider and the resident or resident's representative, if applicable, must enter into an admission agreement. The agreement must be in writing and be signed and dated by both parties. The agreement must, in itself or by reference to the resident's plan of service, include provisions addressing at least the following: ()

- a. Whether or not the resident intends to assume responsibility for self-administering medication; ()
- b. Steps the provider will take in the event the resident is not able to carry out self-preservation (e.g., performance of life-saving measures, contacting 9-1-1, honoring an order not to resuscitate, etc.); ()
- c. Whether or not the provider will accept responsibility for managing the resident's funds; ()
- d. How a partial month's refund will be managed; ()
- e. Arrangements for the return of the resident's belongings should the resident leave the home; ()
- f. Amount of liability coverage provided by the homeowner's or renter's insurance policy and whether the insurance policy covers the resident's personal belongings; ()
- g. A requirement of written notice on the part of the provider, resident, or resident's representative of at least thirty (30) calendar days prior to termination of the admission agreement, when the termination is not for a situation under Subsection 261.01.b. of these rules; ()
- h. Conditions under which an emergency temporary placement will be made consistent with Subsection 261.02 of these rules; ()
- i. Consent or denial for the provider to supply pertinent information from the resident's record to the resident's healthcare professionals or, in case of transfer, current or prospective care setting; ()
- j. Responsibility of the provider to obtain consent for medical procedures from the resident's legal guardian or power of attorney for healthcare if the resident is unable to make medical decisions; ()
- k. Resident responsibilities as appropriate that do not conflict with the CFH requirements; ()
- l. Amount the provider will charge the resident for room and board on a monthly basis, and a separately listed amount for any monthly care charges for which the resident is responsible; ()
- m. A requirement of written notice to the resident or resident's representative of at least thirty (30) calendar days before the provider implements changes to charges under Subsection 260.04.l. of this rule; ()
- n. Protections that address eviction processes and appeals comparable to those provided under Idaho landlord tenant law. The admission agreement must either: ()
 - i. Adopt the eviction and appeal processes under Title 6, Chapter 3, Idaho Code; or ()
 - ii. Adopt the eviction and appeal processes as described in the version of the admission agreement provided by the Department; and ()
- o. Additional conditions as agreed upon by both parties but consistent with the CFH requirements. ()

261. DISCHARGE OR TRANSFER.

01. Termination of Admission Agreement. The admission agreement must only be terminated under the following conditions: ()

- a. The provider or the resident, or the resident's representative, if applicable, provides the other party at least thirty (30) calendar days' prior written notice; or ()

b. A three (3) day written notice may be given by the provider to the resident or the resident's representative, if applicable, when any of the following occur, subject to the appeal process under Subsection 260.04.n. of these rules: ()

- i. Nonpayment of the resident's bill identified in Subsection 260.04.l. of these rules; ()
- ii. The resident violates any written conditions of the admission agreement (e.g., no smoking, no pets, etc.); or ()
- iii. The resident engages in the unlawful delivery, production, or use of a controlled substance on the premises of the home. ()

02. Emergency Temporary Placement. The admission agreement will remain in force and effect, excluding the provider's responsibility for care and the charge to the resident for such care under Subsection 260.04.l. of these rules, while the resident is temporarily transferred from the home to another care setting on an emergency basis unless either party terminates the agreement under Subsection 261.01 of this rule. An emergency temporary placement must only occur when: ()

- a.** The resident's mental or physical condition deteriorates to a level requiring evaluation or services that cannot be met by the provider or reasonably accommodated by the home; or ()
- b.** Emergency conditions require such transfer to protect the resident, other residents, the provider, or other individuals living in the home from harm. ()

03. Return of Resident's Possessions. The provider must document the return of the resident's personal possessions to the resident or resident's representative as arranged in the admission agreement according to Subsection 260.04.e. of these rules, and must: ()

- a.** Return immediately upon discharge: ()
 - i. All personal funds belonging to the resident; and ()
 - ii. Any medication, supplement, or treatment belonging to the resident; ()
- b.** Return within three (3) business days: ()
 - i. If the provider was deemed to be managing the resident's funds under Subsection 275.02 of these rules, a copy of the final accounting of the resident's funds; ()
 - ii. All belongings listed on the resident's belongings inventory; and ()
 - iii. Any other items belonging solely to the resident, including personal documents. ()

262. -- 269. (RESERVED)

270. RESIDENT RECORDS. The provider must maintain legible records for each resident admitted to the home as follows. ()

01. Updated Records. Records maintained by the CFH must be updated, as necessary, to reflect accurate information as changes occur. ()

02. Maintenance of Records. The provider must ensure records are maintained and available for inspection in the home as follows: ()

- a.** Admission records for two (2) years from the date of the resident's discharge from the home; and ()

- b. Ongoing records for two (2) years from the date of the record. ()
- 03. Admission Records.** The following records pertaining to the resident must be completed or collected as part of the initial admission process and continuing retention of the resident's records thereafter: ()
- a. A form containing general resident information including: ()
- i. Full legal name; ()
- ii. Primary residence, if other than the CFH; ()
- iii. Marital status and sex; ()
- iv. Date of birth; ()
- v. The name, address, and telephone number of an individual identified by the resident or the resident's representative who should be contacted in an emergency or upon death of the resident; ()
- vi. The resident's healthcare professionals and their contact information, and the contact information for any other supportive service used by the resident; ()
- vii. Social information including social history, hobbies, and interests; ()
- viii. Information about any specific health problems that may be useful in a medical emergency; and ()
- ix. Any other health-related, emergency, or pertinent information that the resident requests the provider to keep on record. ()
- b. Results of the resident's history and physical examination performed by a healthcare professional conducted no earlier than twelve (12) months prior to admission; ()
- c. A list of all medications, treatments, and special diets prescribed by a healthcare professional; ()
- d. The written admission agreement under Section 260 of these rules; ()
- e. A log of the resident rights policy review under Section 201 of these rules; ()
- f. The assessment under Section 225 of these rules; ()
- g. The plan of service under Section 250 of these rules; ()
- h. An inventory of the resident's belongings that may consist of photographs or a written descriptive list. The resident or the resident's representative may inventory any personal possession they so choose and expect returned upon the resident's transfer or discharge from the home. The belongings inventory may be updated at any time but must be reviewed at least annually; ()
- i. If the resident has a representative, a copy of the document giving the representative legal authority to act on behalf of the resident, including guardianship or power of attorney for healthcare decisions; and ()
- j. A copy of any care plan that is prepared for the resident by an outside service provider. ()
- 04. Ongoing Records.** The following records must be completed or collected by the provider for ongoing services to the resident: ()
- a. Any incident or accident occurring while the resident is living in the home and the staff's response,

including refusal of any prescription medication. If the incident or accident occurs while the resident is receiving supportive services, the provider must obtain a written report of the event from the service provider; ()

- b. The provider's written response to any grievance under Section 200 of these rules; ()
- c. Notes or logs from the licensed nurse, home health agency, physical therapist, or any other service providers, documenting the services provided to the resident at each visit to the home; ()
- d. Documentation of changes in the resident's physical, behavioral, or mental status, and the staff's response, including usage of any PRN medication; ()
- e. When the provider is deemed to be managing the resident's funds, financial accounting records for such funds as described in Section 275 of these rules; and ()
- f. Medication records as described in Sections 400 through 402 of these rules, as applicable. ()

271. -- 274. (RESERVED)

275. RESIDENT FUNDS AND FINANCIAL RECORDS.

01. Resident Funds Policy. Each provider must possess and implement a policy and procedure describing how the resident's funds will be managed including the following: ()

- a. When the resident moves out from the home under any circumstances except those under Section 912 of these rules, the provider will: ()
 - i. Only retain prepaid room and board funds prorated to the last day of the notice period terminating the admissions agreement as specified in the agreement, or upon the resident moving from the home, whichever is later; ()
 - ii. Immediately return all remaining resident funds to the resident or to the resident's representative as specified in the admission agreement under Section 260 of these rules; and ()
 - iii. Only use the resident's funds for that resident's expenses until a new payee is appointed. ()
- b. Prohibit personal loans to the resident from the provider, provider's relatives, and other household members unless the loan is from a relative of the resident. When such a loan is made, the provider must: ()
 - i. Ensure the terms of the loan are described in a written contract signed and dated by the resident or resident's representative; ()
 - ii. Maintain a copy of the loan contract in the resident's record; and ()
 - iii. Immediately update documentation of repayments towards the loan. ()

02. Managing Resident Funds. When the resident's funds are turned over to the provider or staff for any purpose other than payment for services allowed under CFH requirements, or if the provider, provider's relative, staff, or an individual living in the home acts as the resident's payee, the provider is deemed to be managing the resident's funds. The provider who manages a resident's funds must: ()

- a. Establish a separate account at a financial institution for each resident to which resident income and use of the resident's funds may be accounted and reconciled by means of a financial statement; ()
- b. Prohibit commingling of the resident's funds with the funds of any other person, including borrowing funds from the resident; ()
- c. Upon request, notify the resident or the resident's representative the current amount of the

resident's funds available for their use; ()

d. Charge the resident the amount agreed upon in the admission agreement under Section 260 of these rules for CFH services on a monthly basis; ()

e. Maintain separate accounting records, including bank statements, cash ledgers with a running balance of cash on-hand, and receipts for any purchases in excess of ten dollars (\$10) for each resident for whom the provider manages funds; ()

f. Restore funds to the resident if the provider cannot produce proper accounting records of resident's funds or property under Subsection 275.02.e. of this rule. Restitution of these funds to the resident is a condition for continued operation of the CFH; ()

g. Not require the resident to purchase goods or services from or for the home other than those under Section 260 of these rules; and ()

h. Provide the resident, the resident's legal guardian, representative with financial power of attorney, or conservator access to the resident's funds. ()

276. -- 299. (RESERVED)

300. SHORT-TERM CARE AND SUPERVISION.

When the provider is temporarily unavailable to provide care or supervision to the resident, the provider may designate another adult to provide care and supervision, or only supervision to the resident. The provider must assure that this short-term arrangement meets the needs of the resident and protects the resident from harm. ()

01. Alternate Care. Means services to the resident at another CFH. An alternate caregiver operating the other CFH ensures care and supervision are provided to the resident under the resident's original plan of service and admission agreement. The following applies to an alternate care placement: ()

a. The Department must approve an alternate care placement using the process under Section 260 of these rules. The alternate caregiver must: ()

i. Not exceed the number of residents for which the home is certified to provide care; ()

ii. Comply with Section 140 of these rules when the resident receiving alternate care will be the third or fourth resident in the alternate caregiver's home; and ()

iii. Comply with Section 130 of these rules when the resident receiving alternate care requires nursing facility level of care and any other resident in the alternate caregiver's home requires nursing facility level of care. ()

b. Upon approval from the Department, alternate care may be provided for up to thirty (30) consecutive days. ()

c. The provider must give or arrange for resident-specific training to the alternate caregiver prior to alternate care, including supplying copies of the resident's current assessment, plan of service, and admission agreement. ()

02. Substitute Care. Means services to the resident in the same CFH where the resident holds an admission agreement during the regular provider's absence. A substitute caregiver must be an adult designated by the provider to provide care and supervision to the resident in the provider's CFH. The following apply to the designation of a substitute caregiver: ()

a. The provider is responsible to give or arrange for resident-specific training to the substitute caregiver prior to substitute care, including reviewing copies of each resident's current assessment, plan of service, and admission agreement. ()

b. Staffing levels in the home must be maintained at the same level as when the provider is available to provide care and supervision. ()

c. Substitute care can be provided for up to thirty (30) consecutive days. ()

d. The substitute caregiver must have the following qualifications: ()

i. Current certification in first aid and adult Cardio-Pulmonary Resuscitation (CPR) that meets the standards under Section 100 of these rules; ()

ii. A cleared background check under Section 009 of these rules; and ()

iii. Completion of a medications training under Section 100 of these rules. ()

03. Incidental Supervision. Means a brief reprieve for the provider from direct care responsibilities. An individual providing incidental supervision is approved by the provider to supervise the resident only. ()

a. Incidental supervision must not include resident care. ()

b. Incidental supervision may be provided for up to ten (10) hours per week for no more than six (6) consecutive hours, so long as the resident does not require care. ()

301. -- 399. (RESERVED)

400. MEDICATION POLICY.

The provider must possess and implement written medication policies and procedures that describe in detail how staff will ensure appropriate assistance with and handling of and safeguarding of medications. These policies and procedures must be maintained in the home and include the following: ()

01. Following Orders. Assistance given by staff will only be as directed by the resident's healthcare professionals. ()

02. Evidence of Orders. Evidence of each resident's orders will be maintained in the home, regardless of whether the resident is able to self-administer, and may consist of the following: ()

a. Written prescriptions from the healthcare professional for the medication, including the dosage; ()

b. Medisets or sealed blister medication cards filled and appropriately labeled by a pharmacist or licensed nurse with the names of the medications, dosages, times to be taken, routes of administration, and any special instructions; ()

c. An original prescription bottle labeled by a pharmacist describing the order and instructions for use; or ()

d. If the medication, supplement, or treatment is without a prescription, it will be listed among over-the-counter medications approved by the resident's healthcare professional as indicated by a signed statement. Over-the-counter medications will be given as directed on the packaging. ()

03. Alteration of Orders. Staff will not alter dosage, discontinue or add medications, including over-the-counter medications and supplements, or discontinue, alter, or add treatments or special diets without first consulting the resident's prescribing healthcare professional and obtaining an order for the change as required under Subsection 400.02 of this rule. ()

04. Allergies. The provider will list any known food or drug allergies for each resident and take precautions to guard against the resident ingesting such allergens. ()

05. Training. Each staff assisting with resident medications will have successfully completed a medication training under Section 100 of these rules. Additionally: ()

a. Each resident's orders will be reviewed by each staff assisting residents with medications prior to offering assistance; and ()

b. Written instructions will be in place that outline who to notify if any of the following occur: ()

i. Doses are not taken; ()

ii. Overdoses occur; or ()

iii. Side effects are observed. ()

c. The provider will ensure any staff assisting with medications has reviewed each resident's known allergies and takes precautions against the resident ingesting such allergens. ()

06. Consumer Medication Information. The provider will keep on file in the resident's record the consumer medication information handout for each current prescription medication. ()

07. Self-Administration. When the provider cares for a resident who self-administers medications, staff will follow Section 401 of these rules. ()

08. Assistance with Medication. When the provider cares for a resident who needs assistance with medications, the provider must follow Section 402 of these rules. ()

401. SELF-ADMINISTRATION OF MEDICATION.

Prior to giving the resident responsibility for administering medications without assistance, the provider must ensure the following: ()

01. Approval. The provider has obtained written approval from the resident's healthcare professional stating that the resident is capable of safe self-administration; otherwise, staff will comply with Section 402 of these rules. ()

02. Evaluation. The resident's record includes documentation that the resident's healthcare professional has evaluated the resident's ability to safely self-administer medication. The evaluation must include verification of the following: ()

a. The resident understands the purpose of each medication; ()

b. The resident is oriented to time and place and knows the appropriate dosage and times to take the medication; ()

c. The resident understands the expected effects, adverse reactions, or side effects, and knows what actions to take in case of an emergency; and ()

d. The resident can take the medication without assistance or reminders from staff. ()

03. Change in Condition. Should the condition of the resident change such that it brings into question the resident's ability to safely continue self-administration of medications, the provider will arrange for a reevaluation of the resident to self-administer under Subsection 401.02 of this rule. Until the resident's healthcare professional provides written approval for the resident to resume self-administration, staff will comply with Section 402 of these rules. ()

04. Safeguarding Medication. The provider must ensure that the medications of a resident who self-administers are safeguarded, including providing a lockable storage cabinet or drawer to the resident under Section

175 of these rules. The resident is allowed to maintain personal medications under the resident's own control and possession. ()

402. ASSISTANCE WITH MEDICATION.

The provider must offer assistance with medications to residents who need assistance. Prior to staff assisting residents with medication, the provider must ensure the following conditions are in place: ()

01. Condition of the Resident. The resident's health condition is stable. ()

02. Nursing Assessment. The resident's health status does not require nursing assessment before receiving the medication nor nursing assessment of the therapeutic or side effects after the medication is taken, unless the staff assisting with medications is a healthcare professional operating within the scope of their license. ()

03. Containers. The medication is in the original pharmacy-dispensed container with its proper label and directions or in an original over-the-counter container or in a Mediset, blister pack, or similar organizational system. When a Mediset, blister pack, or similar system is used, staff will comply with the following. ()

a. The system contains easily identifiable dates and times for medication dispensing; ()

b. The system is filled according to the schedule ordered by the resident's healthcare professional for each medication; ()

c. Unless filled by a pharmacy or a licensed nurse, the system is filled not more than seven (7) days prior to the scheduled medication dispensing date; ()

d. Staff only *dispense* the specific medication *scheduled* for *dispensing* and *assist* within twenty (20) minutes before or after the specified time; ()

e. The original medication container with its proper label is maintained in the home until the medication it contained is completely used or refused by the resident; and ()

f. Any medication scheduled for dispensing that the resident refuses or that is otherwise missed is immediately removed from the system and disposed of at the earliest opportunity under Subsection 402.07 of this rule. ()

04. Safeguarding Medications. Staff take adequate precautions to safeguard the medications of each resident for whom they provide assistance. Safeguarding consists of the following: ()

a. Storing each resident's medications in an area or container designated only for that particular resident including a label with the resident's name, except for medications that must be refrigerated or over-the-counter medications; ()

b. Keeping the designated area or container for the resident's medications under lock and key when either of the following apply: ()

i. The resident's medications include a controlled substance; or ()

ii. Any member of the household has drug-seeking behaviors. ()

c. Ensuring each resident's designated medication area or container is clean and kept free of contamination, including disposal of loose pills at the earliest opportunity under Subsection 402.07 of this rule; ()

d. Dispensing only one (1) resident's set of medications from its designated area or container at one (1) time to mitigate medication errors; and ()

e. On at least a monthly basis, the provider conducts and documents an inventory of narcotic ()

medications and reconciles the actual amount on-hand with the expected amount on-hand. When a discrepancy occurs between the expected and actual amounts, the provider will: ()

- i. Investigate the cause of the discrepancy; and ()
- ii. Write a summary report of the investigation and keep the report in the resident's record. ()

05. Scope of Practice. Only a healthcare professional working within the scope of their license may administer medications or practice other nursing functions. Practice of such functions must comply with IDAPA 24.34.01, "Rules of the Idaho Board of Nursing." ()

06. Documentation of Assistance. Documentation of assistance with medications is maintained in the home. Such documentation: ()

- a. Is logged concurrent with the time of assistance; and ()
- b. Contains at least the following information: ()
 - i. The name of the resident receiving the medication; ()
 - ii. The name of the medication given; ()
 - iii. The dosage of the medication given; and ()
 - iv. The time and date the medication was given. ()

07. Disposal of Medication. Medication that has been discontinued as ordered by the resident's healthcare professional, has expired, or should otherwise be disposed of under this rule is disposed of by the provider within thirty (30) days of the order, expiration date, or as otherwise described in this rule. A written record of all disposal of drugs will be maintained in the home and include: ()

- a. The name of the medication; ()
- b. The amount of the medication, including the number of pills at each dosage, if applicable; ()
- c. The name of the resident for whom the medication was prescribed; ()
- d. The reason for disposal; ()
- e. The date on which the medication was disposed; ()
- f. The method of disposal; and ()
- g. A signed statement from the provider and a credible witness confirming the disposal of the medication. ()

403. -- 499. (RESERVED)

500. ENVIRONMENTAL SANITATION STANDARDS.

The provider is responsible for disease prevention and maintenance of sanitary conditions in the home and must ensure: ()

01. Water Supply. The water supply for the home is adequate, safe, and sanitary by obtaining and keeping in the home evidence of the following: ()

- a. The home uses a public or municipal water supply or a Department-approved private water supply; ()

b. If water is from a private supply, water samples are submitted to an accredited laboratory and show an absence of bacterial contamination at least annually, or more frequently if deemed necessary by the Department; and ()

c. The home always has adequate water pressure to meet sanitary requirements. ()

02. Sewage Disposal. The sewage disposal system is approved and maintained by obtaining and keeping in the home evidence of the following: ()

a. All sewage and liquid wastes are discharged, collected, treated, and disposed of in a manner approved by the local municipality or the Department. The Department may require the provider to obtain a statement from the area health district indicating that the sewage disposal system meets local requirements. The statement, if required, must be kept on file at the home. ()

b. For homes with nonmunicipal sewage disposal, the septic tank has been pumped within the last five (5) years or the system is otherwise in good working condition. ()

03. Garbage and Refuse Disposal. Garbage and refuse disposal is provided by or at the home at least biweekly and the garbage containers are: ()

a. Constructed of durable materials and provided with tight-fitting lids; ()

b. Maintained in good repair and do not leak or absorb liquids; and ()

c. Sufficient in number to hold under lid all garbage and refuse that accumulates between periods of removal from the premises such that storage areas are free of excess refuse and debris. ()

04. Insect and Rodent Control. The home is maintained free from infestations of insects, rodents, and other pests by using a control program based on the pest involved when an infestation appears. ()

05. Yard. The yard surrounding the home is safe and maintained. ()

06. Laundry. A washing machine and dryer are readily available for the proper and sanitary washing of linen and other washable goods and laundry services are offered: ()

a. On at least a weekly basis; or ()

b. When soiled linens or clothing create a noticeable odor. ()

07. Housekeeping and Maintenance. Sufficient housekeeping and maintenance are provided to maintain the interior and exterior of the home in a clean, safe, and orderly manner including compliance with the following: ()

a. Resident sleeping rooms are cleaned on at least a weekly basis as described in the resident's plan of service and thoroughly cleaned immediately after the discharge of the previous resident using the room; and ()

b. Deodorizers are not used to cover odors caused by poor housekeeping or unsanitary conditions. ()

501. -- 599. (RESERVED)

600. FIRE AND LIFE SAFETY STANDARDS.

Each home must meet the requirements of this rule and all other applicable requirements of local and state codes concerning fire and life safety. ()

01. General Requirements. The provider must ensure that: ()

- a. The home is structurally sound and equipped and maintained to assure the safety of residents. ()
- b. When natural or man-made hazards are present, suitable fences, guards, or railings are in place to protect the resident according to the resident's needs as documented in the plan of service. ()
- c. The exterior and interior of the home are kept free from the accumulation of weeds, trash, debris, rubbish, and clutter. ()
- 02. Fire and Life Safety Requirements.** The provider must ensure that: ()
 - a. Smoke detectors are installed in sleeping rooms, hallways, on each level of the home, and as recommended by the local fire district. ()
 - b. Carbon monoxide (CO) detectors are installed as recommended by the Department when: ()
 - i. The home is equipped with gas or other fuel-burning appliances or devices; or ()
 - ii. An enclosed garage is attached to the home. ()
 - c. Unvented combustion devices of any kind are prohibited from use inside the home. ()
 - d. Any locks installed on exit doors can always be easily opened from the inside without the use of keys or any special knowledge. ()
 - e. Electric portable heating devices are only used under the following conditions: ()
 - i. The unit is maintained in good working order and without obvious damage or fraying of the cord; ()
 - ii. Remain unplugged until in operation, and then plugged directly into a wall outlet and not a surge protector, power strip, or extension cord; ()
 - iii. The user complies with safety labels, which remain on the unit; ()
 - iv. The unit is equipped with automatic shut-off protection when tipped over; and ()
 - v. The unit is operated under direct supervision and at least thirty-six (36) inches away from combustibles (e.g., furnishings, bedding, and blankets), pets, and people. ()
 - f. Each resident's sleeping room has at least one (1) door or window that can be easily opened from the inside and leads directly to the outside. If a window is used as a means of egress/ingress, the following conditions are met: ()
 - i. The window sill height is not more than forty-four (44) inches above the finished floor; ()
 - ii. The window opening is at least twenty (20) inches in width and twenty-four (24) inches in height; and ()
 - iii. If the sleeping room is in a below-ground basement, the window opens into a window well through which the resident can easily exit. ()
 - g. Flammable or highly combustible materials are stored safely. Necessary precautions are taken to protect the resident from obtaining flammable materials as appropriate for the resident's functional and cognitive ability. ()

- h.** Boilers, hot water heaters, and unfired pressure vessels are equipped with automatic pressure relief valves. ()
- i.** A two and a half (2.5) pound or larger dry chemical multipurpose A:B:C type portable fire extinguisher is immediately accessible without obstructions in a designated location, subject to Department approval, on each level of the home. ()
- j.** Electrical installations and equipment comply with IDAPA 24.39.10, "Rules of the Idaho Electrical Board," or authorized local jurisdiction. ()
- k.** Fuel-fired heating devices are approved by the local heating/venting/air conditioning (HVAC) board. ()
- l.** Exits are free from obstruction. ()
- m.** Paths of travel to exits and all exit doorways are at least twenty-eight (28) inches wide. ()
- n.** The door into each bathroom and sleeping room, if equipped with a lock, can be unlocked from either side to allow access to the room in case of an emergency. ()
- o.** Cleaners, pesticides, and other toxic chemicals or materials are: ()
- i.** Only used according to the manufacturer's instructions; and ()
- ii.** Stored with necessary precautions to protect the resident as appropriate for the resident's functional and cognitive ability. ()
- 03. Smoking.** Smoking is a fire hazard. The provider may choose to allow or not allow smoking in the home or on the property. If the provider chooses to allow smoking, the provider must reduce the risk of fire by prohibiting smoking: ()
- a.** In any area where flammable liquids, gases, or oxidizers are in use or stored; ()
- b.** In bed; and ()
- c.** By the resident without supervision unless unsupervised smoking is specifically allowed in the resident's plan of service. ()
- 04. Emergency Preparedness Plan.** The provider must develop and implement a written emergency preparedness plan. The provider must review the plan with the resident, or the resident's representative, at admission and at least every twelve (12) months thereafter. The plan must address the following: ()
- a.** Evacuation of the home in the event of a house fire, including: ()
- i.** A floor plan depicting at least two (2) escape routes from each room, excluding bathrooms and the laundry room; ()
- ii.** A designated meeting area indicated on the floor plan where all household members will congregate upon evacuation of the home; and ()
- iii.** Identification of the person responsible to take a head-count at the designated meeting area and relay information to firefighters regarding the probable whereabouts in the home of missing individuals. ()
- b.** Emergency situations in which people are confined to the home for a period of at least seventy-two (72) hours and considering adequate food, water, and medications during that time; ()
- c.** Complying with mandatory evacuation orders from the area, including prearranged plans to shelter

within the local community and in a town outside the local community, and considering the necessary supplies that will be kept in a state of readiness for quick evacuation; and ()

- d. Procedures for any situation in which the provider is incapacitated and unable to provide services. ()

05. Emergency Drills. The provider must ensure staff conduct emergency drills, at least half of which over a year are fire drills, at least every three (3) months as follows: ()

- a. Those persons capable of participating in a fire drill reach a point of safety outside the home within three (3) minutes from the start of the drill. ()

- b. Residents who are medically unable to exit unassisted are exempt from physical participation in a fire drill if the provider has an effective evacuation plan for such residents and staff discuss the plan with the resident immediately prior to the drill; ()

- c. Documentation of the drill is kept in the home, which may consist of a video recording or a written summary, to include the following: ()

- i. The date and time of the drill; ()

- ii. The purpose of the drill; ()

- iii. If a fire drill, the length of time for all persons who participated in the drill to reach a point of safety outside the home; ()

- iv. The name or likeness of each person who participated in the drill; and ()

- v. Any problems encountered during the drill or deviations from the home's emergency plans, and how the provider will overcome the problem or improve performance in future drills. ()

06. Maintenance of Equipment. The provider must ensure that all equipment in the home is properly maintained by: ()

- a. Testing smoke and carbon monoxide detectors at least monthly and keeping a written record of the test results on file in the home. ()

- b. If the smoke or carbon monoxide detector has replaceable batteries, replacing the batteries at least every twelve (12) months or as indicated by a low battery, whichever occurs first. ()

- c. Replacing each smoke or carbon monoxide detector at the end of its useful life as indicated by the manufacturer, which date is to be labeled on the unit. ()

- d. Replacing or servicing the portable fire extinguishers through a professional servicing company every twelve (12) months or when the quarterly examination reveals issues with the extinguisher under Subsection 600.06.e. of this rule, whichever occurs first. ()

- e. Examining all portable fire extinguishers at least every three (3) months as indicated by initials and date on a log, to determine that: ()

- i. The extinguisher is in its designated location; ()

- ii. Seals or tamper indicators are not broken, and the safety pin is in place; ()

- iii. The extinguisher has not been physically damaged; ()

- iv. The extinguisher does not have any obvious defects, such as leaks; ()

- v. The nozzle is unobstructed and intact; and ()
- vi. Chemicals are prevented from settling and clumping by repeatedly tipping the extinguisher upside down and right-side up. ()
- f. When the home has wood-burning or pellet stoves, arranging for professional cleaning of the chimneys at least annually by a person in the business of chimney sweeping, and keeping the records on file in the home. ()
- g. Maintaining functional and dependable telephone or cell phone service and hardware. Additionally, ensuring that the following numbers are either programmed into the telephone or cell phone, or alternatively, such numbers are posted in the home: ()
 - i. General emergency numbers including 9-1-1, poison control, adult protective services, and the suicide hotline; and ()
 - ii. Emergency contacts for each resident. ()

601. -- 699. (RESERVED)

700. HOME CONSTRUCTION AND PHYSICAL HOME STANDARDS.

01. General Requirements. Any residence used as a CFH must be suitable for that use. CFHs must only be located in buildings intended for residential use. ()

a. Remodeling or additions to the home must be consistent with residential use of the property and must comply with local building standards and IDAPA 24.39.30, "Rules of Building Safety (Building Code Rules)," including obtaining building permits as required by the local jurisdiction. ()

b. All homes are subject to Department approval. ()

02. Toilet Facilities and Bathrooms. The home must contain: ()

a. A bathroom equipped with at least one (1) flush toilet, one (1) tub or shower, and one (1) sink with a mirror; ()

b. Toilet and shower or bathing facilities separated from all rooms by solid walls or partitions; ()

c. A window that is easily opened to the outside, or forced ventilation to the outside, in each room containing a toilet, shower, or bath; ()

d. All tubs, showers, and sinks connected to hot and cold running water; and ()

e. Without passing through another person's sleeping room, access to toilet and bathing facilities designated for the resident's use. ()

03. Accessibility for Residents with Physical and Sensory Impairments. A provider choosing to provide services to a resident who has difficulty with mobility or who has sensory impairments must ensure the physical environment maximizes the resident's independent mobility and use of appliances, bathroom facilities, and living areas. The home must be equipped with necessary accommodations that meet the "American With Disabilities Act Accessibility Guidelines--Standards for Accessible Design (SFAD)," under Section 002 of these rules and as described below according to the individual resident's needs: ()

a. A ramp that complies with Section 405 of the SFAD. Elevators or lifts that comply with Sections 409 and 410, respectively, may be utilized in place of a ramp; ()

- b.** Doorways large enough to allow easy passage of a wheelchair and that comply with Subsection 404.2.3 of the SFAD; ()
- c.** Toilet and bathing facilities that comply with Sections 603 and 604 of the SFAD; ()
- d.** Sinks that comply with Section 606 of the SFAD; ()
- e.** Grab bars in resident toilet facilities and bathrooms that comply with Section 609 of the SFAD; ()
- f.** Bathtubs or shower stalls that comply with Sections 607 and 608 of the SFAD, respectively; ()
- g.** Non-retractable faucet handles that comply with Subsection 309.4 of the SFAD. Self-closing valves are not allowed; ()
- h.** Suitable handrails on both sides of all stairways leading into and out of the home that comply with Section 505 of the SFAD; and ()
- i.** Smoke and carbon monoxide detectors that comply with Section 702 of the SFAD. ()
- 04. Storage Areas.** Adequate storage space must be provided in the home. ()
- 05. Lighting.** Adequate lighting must be provided in all resident sleeping rooms and any other rooms accessed by the resident. ()
- 06. Ventilation.** The home must be well-ventilated and the provider must take precautions to prevent offensive odors. ()
- 07. Heating and Cooling.** The temperature in the home must be maintained between sixty-five degrees Fahrenheit (65°F) and eighty degrees Fahrenheit (80°F) when residents or adult hourly care participants are at home. Thermostats must be located away from stoves, fireplaces, and furnaces. ()
- 08. Plumbing.** All plumbing in the home must be in good working order and comply with local and state codes. All plumbing fixtures must be maintained in good repair. ()
- 09. Resident Sleeping Rooms.** The provider must ensure each sleeping room occupied by a resident is: ()

 - a.** Not an attic, stairway, hall, or any other space commonly used for other than bedroom purposes. ()
 - b.** Not in a below-ground basement or a room located on the second story or higher unless the following conditions are met: ()

 - i.** The resident is able to independently recognize an emergency and self-evacuate from the sleeping room without physical assistance or verbal cueing as assessed and indicated in the resident’s plan of service; or ()
 - ii.** The sleeping room of a responsible and able-bodied individual living in the home is located on the same level with the resident’s sleeping room; and ()
 - iii.** The level of the home on which the resident’s sleeping room is located has floors, ceilings, and walls that are finished to the same degree as the rest of the home. ()
 - c.** Separated by walls running from floor to ceiling and has a solid door. ()

- d.** Not also the provider’s sleeping room unless there is medical necessity to share the room. A relative of the provider must not share the resident’s sleeping room unless the individual is also a relative of the resident. ()
- e.** Covered by a ceiling with a height of at least seven feet, six inches (7’6”) at its lowest point. ()
- f.** Equipped with a closet that is: ()

 - i.** If shared, fairly and substantially divided such that each resident’s space is clearly distinct. ()
 - ii.** Equipped with a door if the resident so chooses. ()
- g.** At least one hundred (100) square feet for a one (1) person sleeping room and at least one hundred and sixty (160) square feet for a two (2) person sleeping room. Free-standing closet space must be deducted from the square footage in the sleeping room. ()

701. MANUFACTURED AND MODULAR HOMES.

01. Approved Homes. A residential modular or manufactured building approved by the Idaho Division of Building Safety (DBS) or U.S. Department of Housing and Urban Development (HUD) may be approved for use as a CFH when the home meets the following: ()

- a.** The manufactured or modular home meets the HUD or DBS requirements under state and federal regulations as of the date of manufacture; and ()
- b.** The manufactured or modular home meets the adopted standards and requirements of the local jurisdiction in which the home is located. ()

02. Prohibited Homes. The following types of manufactured homes will not be approved by the Department for use as a CFH: ()

- a.** Recreational vehicles, including fifth wheel trailers, truck campers, and commercial coaches; ()
- b.** Manufactured or modular tiny houses with 400 square feet or less of floor space, excluding lofts; ()
- c.** Tent-like structures, including yurts; and ()
- d.** Manufactured or modular homes not approved by DBS or HUD or with unregulated or unapproved modifications or additions. ()

702. -- 709. (RESERVED)

710. SITE REQUIREMENTS.

The provider must ensure home and real property comply with the following: ()

- 01. Fire District.** The home is located in a lawfully constituted fire district or the provider holds an agreement with the nearest fire district that the fire department will respond when not responding to other calls within their district. ()
- 02. Accessible Road.** The home is always served by an all-weather road kept open to motor vehicles all year. ()
- 03. Emergency Medical Services.** The home is accessible to emergency medical services. ()

04. Accessible to Services. The home is accessible to necessary social, medical, and rehabilitation services. ()

05. House Number. The house number is prominently displayed and plainly visible from the street. ()

711. -- 899. (RESERVED)

900. EMERGENCY POWERS OF THE DIRECTOR.

When an emergency endangers the life or safety of a resident, the Director may summarily suspend or revoke any CFH certificate. As soon thereafter as practical, the Director will provide an opportunity for a hearing under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." ()

901. ENFORCEMENT PROCESS.

If the Department finds that the provider does not meet, or did not meet, a rule or statute governing CFHs, it may impose a remedy, independently or in conjunction with others, subject to these rules for notice and appeal. ()

01. Determination of Remedy. In determining which enforcement remedy(s) to impose, if any, the Department will consider the provider's compliance history, complaints, and the number, scope, and severity of the deficiencies. Subject to these considerations, the Department may impose any of the remedies listed under Sections 909 through 915 of these rules. ()

02. Notice of Enforcement Remedy. The Department will give the provider written notice of any enforcement remedy it imposes. The notice will be mailed immediately by certified mail or delivered by personal service upon the Department's decision. The notice will include the decision, the reason for the Department's decision, and how the provider may appeal the decision under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." ()

902. FAILURE TO COMPLY.

The Department may impose any of the enforcement remedies under Sections 909 through 913 of these rules when it determines any of the following conditions exist: ()

01. Out of Compliance. The provider has not complied with any part of the CFH requirements within thirty (30) days of being notified by the Department in writing that the CFH is out of compliance with that requirement. ()

02. Lack of Progress. The provider has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted the provider's plan of correction. ()

903. REPEATED NONCOMPLIANCE.

When the Department determines that a provider has repeated noncompliance with any of the CFH requirements, it may impose any of the enforcement remedies under Sections 909 through 913 of these rules. ()

904. -- 908. (RESERVED)

909. ENFORCEMENT REMEDY OF PROVISIONAL CERTIFICATION.

When the Department finds that the provider is unable or unwilling to meet a CFH requirement because of conditions that are not anticipated to continue beyond six (6) months and do not jeopardize the health or safety of the residents, the Department may impose provisional certification upon the provider. ()

01. Conditions of Provisional Certification. The Department, at its discretion, may impose conditions upon the provider in conjunction with provisional certification, which conditions will be included with the notice of provisional certification, if so imposed. Conditions are imposed to ensure the provider achieves compliance with the CFH requirements and to aid the Department in monitoring the provider's performance during the provisional certification period. ()

02. Certification or Revocation. The Department, upon review of the provider's performance during

the provisional certification period, may issue a full certificate to the provider when the Department finds that the provider has achieved compliance with the CFH requirements, or revoke the provider's certificate if the provider failed to comply. ()

910. ENFORCEMENT REMEDY OF BAN ON ALL ADMISSIONS.

All admissions to the home are banned pending satisfactory correction of all deficiencies. The ban remains in effect until the Department determines that the provider has achieved full compliance with all CFH requirements or until a substitute remedy is imposed. ()

911. ENFORCEMENT REMEDY OF BAN ON ADMISSIONS OF RESIDENT WITH SPECIFIC DIAGNOSIS.

Any admission to the home of a prospective resident with a specific diagnosis may be banned when the Department has determined the provider lacks the skill or ability to provide adequate care to such a resident under Section 170 of these rules. ()

912. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENT.

The Department may summarily suspend the provider's certificate and transfer the resident when convinced by a preponderance of the evidence that the resident's health and safety are in immediate jeopardy. In such a transfer, the provider must: ()

01. Return Resident's Possessions. Comply with Subsection 261.03 of these rules; and ()

02. Refund Prepaid Charges. Refund to the resident a prorated amount restoring prepaid charges for room, board, and care for the month within fourteen (14) calendar days of the Department's notice of summary suspension. ()

913. ENFORCEMENT REMEDY OF REVOCATION OF CERTIFICATE.

01. Revocation of the Certificate. The Department may institute a revocation action when persuaded by a preponderance of the evidence that the provider is not in compliance with the CFH requirements. ()

02. Additional Causes for Revocation. The Department may also revoke any certificate for any of the following causes: ()

a. The provider willfully misrepresented or omitted any of the following: ()

i. Information pertaining to the continuing certification of the CFH; or ()

ii. Information pertaining to an investigation that obstructs the certifying agent's collection of evidence. ()

b. When persuaded by a preponderance of the evidence that conditions exist endangering the health or safety of any resident; ()

c. An act adversely affecting the welfare of any resident is being or has been permitted, aided, performed, or abetted by the provider or staff. Such acts may include neglect, physical, mental, or sexual abuse, and exploitation; ()

d. The provider has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a CFH; ()

e. The provider has violated any condition of a provisional certificate in effect upon the CFH; ()

f. The provider has been cited with one (1) or more core issue deficiencies; ()

g. An accumulation of minor violations that, when taken as a whole, constitute inadequate care; ()

- h.** Repeat violations of any of the CFH requirements; ()
- i.** The provider lacks the ability to properly care for the resident, as required by the CFH requirements, or as directed by the Department; ()
- j.** The provider refuses to allow any certifying agent or other representative of the Department or protection and advocacy agency representative full access to the home, records, or the residents according to their respective authority to access such; ()
- k.** The provider fails to pay the certification fee under Section 109 of these rules. ()

914. (RESERVED)

915. TRANSFER OF RESIDENT.

The Department may require transfer of a resident from a CFH to an alternative placement on the following grounds: ()

01. Violation of Laws or Rules. As a result of a violation of a provision of the CFH requirements, the provider is unable or unwilling to provide an adequate level of meals, lodging, personal assistance, or supervision to the resident; or ()

02. Violation of Resident's Rights. As a result of a violation of the resident's rights under Section 39-3516, Idaho Code, or Section 200 of these rules. ()

916. -- 949. (RESERVED)

950. RIGHT TO SELL.

Nothing contained in these rules limits the right of any homeowner to sell, lease, mortgage, or close any CFH under applicable laws. ()

951. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected. The Department of Health and Welfare requests that the effective date specified in the concurrent resolution be July 1, 2023.

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

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending 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.

Under [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule language.

Changes to text being made at this pending stage are to clarify the proposed language, eliminate obsolete language, and streamline rule text.

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 August 3, 2022, Idaho Administrative Bulletin, [Vol. 22-8, pages 36 through 55](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 39-1107, and 56-1007, Idaho Code. There are no changes to the fees charged by the Department for criminal history and background checks under this chapter of rule.

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 is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

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

DATED this 7th day of November, 2022.

Trinette Middlebrook and Frank Powell
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

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

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

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule 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 is not anticipated to have any fiscal impact on State General Funds, or any other known 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 April 6, 2022, Idaho Administrative Bulletin, ([Vol. 22-4, pp. 30-31](#)).

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 Fernando Castro at (208) 332-7999.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 30th day of June, 2022.

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 16-0506-2201

Substantive changes have been made in the pending rule.
Italicized red text indicates changes between the text of the proposed rule as adopted in the pending rule.

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

000. LEGAL AUTHORITY.

Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code, *authorize the Department to conduct criminal history and background checks*. US Public Law 92-544, authorizes the Department to submit fingerprints and receive responses from the Federal Bureau of Investigations for the processing of background checks. IRS Publication 1075 requires the Department to submit fingerprints and establish a personnel screening program for its employees who have access to the Federal Tax Information File as part of their duties. 42 USC Section 9858f *requires* the Department to check specific records for federal child care programs. ()

001. POLICY.

The Department *will* conduct *a* fingerprint-based criminal history and background check on individuals who complete a criminal history application. The criminal history applicant is required to disclose any pertinent information regarding crimes or findings that would disqualify the individual from providing care or services to children or vulnerable adults. The Department may obtain information for these criminal history and background checks from the following sources: ()

01. Federal Bureau of Investigation. ()
02. Idaho State Police Bureau of Criminal Identification. ()
03. Any state or federal Child Protection Registry. ()
04. Any state or federal Adult Protection Registry. ()
05. Any state Sexual Offender Registry. ()
06. Office of Inspector General List of Excluded Individuals and Entities. ()
07. Idaho Department of Transportation Driving Records. ()
08. Nurse Aide Registry. ()
09. Other states and jurisdictions records and findings. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

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

01. **Agency.** An administrative subdivision of government or an establishment engaged in doing business for another entity. This term is synonymous with the term “employer”. ()
02. **Application.** An individual’s request for a background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. ()
03. **Background Check Unit.** The Department’s Unit responsible for processing fingerprint-based

background checks, and issuing clearances or denials according to these rules. ()

04. Clearance. A clearance is a document designated by the Department as the official result of a completed background check with no disqualifying crimes or relevant records found. ()

05. Conviction. An individual is considered to have been convicted of a criminal offense *when*: ()

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

b. *There is a* finding of guilt against the individual by any federal, state, military, or local court; ()

c. A plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; ()

d. An individual has entered into or participated in first offender, deferred adjudication, or another arrangement or program where judgment of conviction has been withheld. This includes *when*: ()

i. An individual participates in a drug court; or ()

ii. An individual participates in a mental health court. ()

06. Criminal History and Background Check. A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records. *Also referred to as "background check"*. ()

07. Denial. A denial *of clearance* is issued by the Department when an individual has a relevant record or disqualifying crime *under Sections 200 and 210 of these rules*. ()

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

09. Direct Patient Access Employee. Any individual who has access to a patient or resident of a long-term care provider or facility whether through employment or contract, and who has duties or performs tasks that involve (or may involve) one-on-one (1:1) contact with a patient or resident or has access to *their* personal belongings. Volunteers are not considered a Direct Patient Access employee of a long-term care provider or facility unless volunteers are required to undergo a background check *under* the rules applicable to that specific type of facility or provider. ()

10. Disqualifying Crime. A disqualifying crime is a designated crime *under* Section 210 of these rules that results in the unconditional denial of an applicant. ()

11. Employer. An entity that hires people to work in exchange for compensation. This term is synonymous with the term "agency". ()

12. Enhanced Clearance. A clearance issued by the Department that includes a search of child protection registries in states or jurisdictions in which an applicant resided during the preceding five (5) years. ()

13. Relevant Record. A record that is found in a search of criminal records or registries checked by the Department *under* Section 56-1004A, Idaho Code, and these rules. ()

011. -- 049. (RESERVED)

050. FEES AND COSTS FOR BACKGROUND CHECKS.

The fee for a Department fingerprint-based background check is up to seventy dollars (\$70) for an individual. The

applicant is responsible for the cost of the background check. *The Department may* waive *the fee* for certain individuals. An applicant is responsible for any additional costs incurred by the Department paid to agencies, judicial, or law enforcement jurisdictions in other states. The Department will collect the additional funds to cover its costs.

()

051. -- 059. (RESERVED)

060. AGENCY RESPONSIBILITIES.

01. Initial Registration. Agencies required to *obtain* Department background checks on individuals must register with the Department and receive an agency identification number before applications are processed or accessed.

()

02. Change in Name or Ownership. An agency or facility must:

()

a. If acquired by another entity, the new ownership will register as a new agency and provide contact information to obtain a new agency identification number and website access within thirty (30) calendar days of acquisition. New ownership occurs when the agency obtains a new federal Employer Identification Number with the Internal Revenue Service.

()

b. The previous ownership will settle any background check debt with the Department prior to the completion of the acquisition. The Department reserves the right to not acknowledge the transfer to the new ownership if the previous ownership background check debt is not settled.

()

c. If there is a change *in* name or location, the agency will update their profile on the Department website with their new name, location, and contact information within thirty (30) calendar days of the change.

()

03. Applicant Screening. The agency *must* screen applicant background check disclosures that are submitted to the Department website to determine the suitability of the applicant for employment or program participation. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment or program participation should be made during the initial application review.

()

04. Time Frames For Compliance. The agency is responsible for ensuring the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules.

()

05. Review Background Check Results. The agency is responsible for reviewing the results of the background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The agency must complete this review within fourteen (14) calendar days of the clearance being accessible on the Department's website.

()

06. Employment Determination. The Department does not make the final fitness determination for employment or program participation for the applicant. The agency will *determine* the ability or risk of the individual to provide care or services to children or vulnerable adults after reviewing the applicant's background check results.

()

07. Discovery of Criminal Convictions or Disqualifying Records After Clearance is Issued. *After* a clearance *is issued*, if the agency discovers that the applicant may no longer be eligible to hold a Department clearance due to the existence of either a conviction for a disqualifying offense, or a relevant record *listed in these rules*, the agency is required to report their discovery to the Background Check Unit. The Department may compel the applicant to be processed for a new background check *under* Subsection 195.04 of these rules if it deems it appropriate to do so.

()

08. Retention of Records. The agency will retain all applicant background check documentation as provided in Subsection 300.02 of these rules.

()

061. -- 069. (RESERVED)

070. NONCOMPLIANCE WITH THESE RULES.

The Department will report an agency’s noncompliance with these rules to the applicable licensing or certification unit or appropriate program integrity unit. ()

071. -- 099. (RESERVED)

100. INDIVIDUALS SUBJECT TO A BACKGROUND CHECK.

The following are persons or classes of individuals who are required by statute, or Department rules, to complete a background check. ()

Required Classes	Idaho Code and IDAPA Chapter(s)
01. Adoptive Parent Applicants	<i>IDAPA 16.04.18, “Children’s Agencies and Residential Licensing”</i> IDAPA 16.06.01, “Child and Family Services” IDAPA 16.06.02, “Child Care <i>and Foster Care</i> Licensing”
02. Certified Family Homes	Section 39-3520, Idaho Code IDAPA 16.03.19, “Certified Family Homes” IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits”
03. Children’s Agency Facility Staff	IDAPA 16.04.18, “ <i>Children’s Agencies and Residential Licensing</i> ”
04. Children’s Residential Care Facilities	Section 39-1210, Idaho Code IDAPA 16.04.18, “ <i>Children’s Agencies and Residential Licensing</i> ”
05. Children’s Therapeutic Outdoor Programs	Section 39-1208, Idaho Code IDAPA 16.04.18, “ <i>Children’s Agencies and Residential Licensing</i> ”
06. Citizen Review Panel Members	Public health district volunteers who must comply with Section 16-1647, Idaho Code, “Citizen Review Panels - Child Protection Legislative Review Panel”
07. Contracted Non-Emergency Medical Transportation Providers	IDAPA 16.03.09, “Medicaid Basic Plan Benefits”
08. Court Appointed Guardians and Conservators	Title 15, Chapter 5, Idaho Code, & Title 66, Chapter 4, Idaho Code. Court required guardian and conservator background checks are not provided Department clearances <i>under Subsection</i> 180.01 of these rules
09. Designated Examiners and Dispositioners	IDAPA 16.07.39, “Designated Examiners and Dispositioners”
10. Developmental Disabilities Agencies	IDAPA 16.03.21, “Developmental Disabilities Agencies” (DDA) IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits”
11. Emergency Medical Services (EMS)	IDAPA 16.01.05, “Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements”
	IDAPA 16.01.07, “Emergency Medical Services (EMS) -- Personnel Licensing Requirements”
12. High Risk Providers of Medicaid	IDAPA 16.03.09, “Medicaid Basic Plan Benefits” The Medicaid Provider Handbook
13. Home and Community-Based Services (HCBS)	IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits”
	IDAPA 16.04.17, “Residential Habilitation Agencies”
14. Home Health Agencies	IDAPA 16.03.07, “Home Health Agencies”

Required Classes	Idaho Code and IDAPA Chapter(s)
15. Idaho Behavioral Health Plan (IBHP)	IDAPA 16.03.09, "Medicaid Basic Plan Benefits"
16. Idaho Child Care Program (ICCP)	IDAPA 16.06.12, "Idaho Child Care Program" (ICCP)
17. Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)	IDAPA 16.03.11, "Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)"
18. Licensed Foster Care	Section 39-1211, Idaho Code IDAPA 16.06.02, "Child Care <i>and Foster Care</i> Licensing"
19. Licensed Day Care	Sections 39-1105, 39-1113, and 39-1114, Idaho Code IDAPA 16.06.02, "Child Care <i>and Foster Care</i> Licensing"
20. Mental Health Services	IDAPA 16.07.33, "Adult Mental Health Services" IDAPA 16.07.37, "Children's Mental Health Services"
21. Personal Assistance Agencies	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
22. Personal Care Service Providers	Section 39-5604, Idaho Code IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
23. Residential Assisted Living Facilities	IDAPA 16.03.22, "Residential Assisted Living Facilities"
24. Service Coordinators and Paraprofessional Providers	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
25. Skilled Nursing Facilities	IDAPA 16.03.02, "Skilled Nursing Facilities"
26. Substance Use Disorders Services	IDAPA 16.07.17, "Substance Use Disorders Services"
27. Support Brokers and Community Support Workers	IDAPA 16.03.13, "Consumer-Directed Services"

()

101. DEPARTMENT INDIVIDUALS SUBJECT TO A BACKGROUND CHECK.

The following Department employees, contractors, and volunteers are subject to background checks.

()

01. Employees, Contractors, and Volunteers. Employees, contractors, and volunteers providing direct care services or who have access to children or vulnerable adults *under* Section 39-5302(10), Idaho Code.

()

02. Employees of Bureau of Compliance.

()

a. Fraud Investigators;

()

b. Utilization Review Analysts; and

()

c. Background Check Unit staff.

()

03. Employees at State Institutions. All employees of the following state-funded institutions;

()

a. Southwest Idaho Treatment Center, Nampa, Idaho;

()

b. State Hospital North, Orofino, Idaho;

()

c. State Hospital South, Blackfoot, Idaho; and

()

d. State Hospital West, Nampa, Idaho.

()

04. Emergency Medical Services (EMS) Employees. EMS communication specialists and managers. ()

05. Other Employees. Other Department employees as determined by the Director. ()

102. -- 119. (RESERVED)

120. APPLICATION FOR A BACKGROUND CHECK.

Individuals who are subject to a background check must submit their application on the Department website. ()

01. Application Form. To request a background check, *the applicant must apply* on the Department website *and provide all the information requested in the Department-provided forms*. The individual's application authorizes the Department to obtain information and release it *under* applicable state and federal law. ()

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

03. Failure to Disclose Information. ()

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

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

121. -- 124. (RESERVED)

125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.

The Department will provide the results of a check of the Idaho Child Protection Central Registry to any agency that requires it to comply with applicable federal, state, or local law. The Department will process those requests *under* this rule. ()

01. Request for an Idaho Child Protection Central Registry Check. A request for an Idaho Child Protection Central Registry check must be submitted on the Department form by mail, facsimile transmission, or e-mail attachment. ()

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

03. Department Response. A response will be returned to the agency initiating the request for the check within fourteen (14) days of receipt of the request. The Department's response will be limited to confirmation whether the subject is listed in the Registry. *The requestor may contact the Department's Division of Family and Community Services if additional information is needed.* ()

126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a background check. If the applicant's previous background check included checks of out-of-state Central Child Protection Registries within the previous six (6) months, the applicant is not required to complete them again. ()

01. Adoptive Parent Applicants. ()

02. Behavioral Health Programs. ()

- 03. Certified Family Homes. ()
- 04. Children’s Agency Facility Staff. ()
- 05. Children’s Residential Care Facilities. ()
- 06. Children’s Therapeutic Outdoor Programs. ()
- 07. Citizen Review Panel Members. ()
- 08. Idaho Child Care Program (ICCP). ()
- 09. Licensed Foster Care. ()
- 10. Licensed Day Care. ()
- 11. Mental Health Services. ()
- 12. Substance Use Disorders Services. ()

127. -- 139. (RESERVED)

140. SUBMISSION OF FINGERPRINTS.

Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department *under* Section 150 of these rules *to process* a background check request. ()

01. Department Fingerprinting Locations. *The Department will collect the individual's fingerprints at designated locations* listed on the Department’s website. The applicant may contact the Background Check Unit for additional guidance. ()

02. Submitting Fingerprints by Mail. *Individuals who* elect to have fingerprints collected by a local law enforcement agency or by the applicant’s agency *must use* a federal FD-258 Applicant fingerprint card. The fingerprint card must be completed *using* the instructions provided, signed, and mailed along with the applicable fee to the address indicated on the Department’s website. The applicant fingerprints and fees must be received by the Department in the time frame required in Section 150 of these rules. ()

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

141. -- 149. (RESERVED)

150. TIME FRAME FOR SUBMITTING FINGERPRINTS.

01. Time Frame. The applicant fingerprints must be received by the Department within twenty-one (21) days from the date of *the application* submission in the Department background check system whether the fingerprints are sent by mail or collected at a Department fingerprinting location. If the Department does not receive the applicant fingerprints within sixty (60) calendar days from the background check submission date on the Department website, the applicant must complete a new application. ()

02. No Extension of Time Frame. The Department will not extend the twenty-one (21) day time frame, unless the agency provides just cause. If the Department does not extend the time frame, the applicant must be removed from any situation where they can have direct access to *a* vulnerable person or their belongings. ()

151. -- 159. (RESERVED)

160. WITHDRAWAL OF APPLICATION.

An individual may withdraw their application for a background check at any time. An individual who withdraws their application cannot provide services, or receive licensure or certification. Fees paid for the cost of the background check are non-refundable once the fingerprints have been submitted by the Department to the Idaho State Police.

()

161. -- 169. (RESERVED)

170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE BACKGROUND CHECK.

An individual is available to provide services *on the day the application is submitted on the Department website, has been reviewed by the agency, and while* pending completion of the background check *under* this rule. The individual must have submitted their application and fingerprints in the time frame required in Section 150 of these rules to provide services.

()

01. Employees of Providers, Contractors, Bureau of Emergency Medical Services (EMS), or the Department. An individual is available to provide services on a provisional basis at the discretion of the agency or EMS Bureau if no disqualifying crimes or relevant records are disclosed on the application. The agency must review the application for any disqualifying crimes *under* Section 210 of these rules or other relevant records *under* Section 200 of these rules. The agency determines whether the applicant poses a health or safety risk to vulnerable clients before allowing the individual to provide services until a clearance or denial is issued by the Department.

()

02. Individuals Licensed or Certified by the Department. Individuals applying for licensure or certification by the Department are not available to provide services or receive licensure or certification until the background check is complete and a clearance is issued by the Department. The following are individuals required to have a clearance prior to providing services:

()

- a. Adoption or foster care applicants and adults in the home; ()
- b. Certification or licensure applicants; ()
 - i. Certified family homes; ()
 - ii. Licensed Emergency Medical Services applicants; and ()
 - iii. Department-licensed child care providers. ()

171. -- 179. (RESERVED)

180. BACKGROUND CHECK RESULTS.

The Department will issue a clearance or denial once the background check is completed.

()

01. Results of Background Checks. The results *can* be accessed on the Department's website.

()

02. Findings for Court-Required Criminal History and Background Checks. *Under* Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court-ordered background check to individuals appointed by the court *under* Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code.

()

03. Department Employees That Have Access to the Internal Revenue Service Federal Tax Information File. Employees assigned to the Self-Reliance Division that access the Internal Revenue Service Federal Tax Information file as part of their duties will be processed for a background check by the Background Check Unit. The Self-Reliance Division will make *a* fitness determination based on *its* own policies.

()

181. APPLICATION STATUS.

An individual and their agency may check on the background check status and the individual's availability to work on the Department website.

()

182. -- 189. (RESERVED)

190. BACKGROUND CHECK CLEARANCE.

01. Clearance. A clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and is available for printing to the individual and their agency. ()

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

a. *An enhanced clearance is required for each of the classes listed in Section 126 of these rules and requires searches from states and jurisdictions where the applicant has resided in the previous five (5) years. A relevant record on any child protection registry will result in a denial under Subsection 200.01 of these rules. An applicant who applies to work in any of these classes must receive or have an enhanced clearance.* ()

b. *An applicant not listed in Section 126 of these rules will receive a clearance provided they do not disclose or have a relevant record under Subsections 200.01.a., 200.01.c., 200.01.d., 200.01.e., 200.01.f., or 200.01.g., or a disqualifying crime under Subsections 210.01, 210.02, or 210.03 of these rules.* ()

03. Revocation of Clearance. A clearance may be revoked for the following: ()

a. The individual fails to comply with the Department's request to submit to a new background check *under* Subsection 195.04 of these rules. ()

b. The individual completes a new background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial *under* Sections 200 *or* 270 of these rules. ()

c. The applicant withdraws their application from the background check process *under* Section 160 of these rules. ()

d. The background check fees are not paid, or are insufficient to cover the costs of the background check. ()

191. -- 194. (RESERVED)

195. USE OF PREVIOUSLY COMPLETED BACKGROUND CHECKS.

The agency is responsible for confirming that the applicant has *received a clearance* under Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same agency eliminates the requirement for a new background check. ()

01. New Background Check. Any individual required to have a background check under these rules must complete a new application, including fingerprints when: ()

a. An applicant is accepting employment with a new agency, and their last Department background check was completed more than three (3) years prior to their employment date; or ()

b. An applicant is applying for licensure or certification with the Department, and their last Department background check was completed more than three (3) years prior to their employment date or licensure application date; *or* ()

c. An applicant's *affiliation ends*, is *later re-affiliated to* the same agency, and the applicant background check is older than three (3) years at the time of the *re-affiliation*. ()

02. Use of *Background* Check Within Three Years of Completion. Any agency may use a Department background check clearance obtained under these rules if: ()

a. The individual has received a Department's background check clearance within three (3) years from the date of employment; ()

b. Prior to allowing the individual to provide services, the agency must affiliate itself to the individual's clearance through the Department's website by having the agency's identification number added to the individual's background check; and ()

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

i. The action must be initiated by the agency within thirty (30) calendar days of obtaining access to the individual's background check clearance issued by the Department; and ()

ii. The agency must be able to provide proof of this action by maintaining a copy of the records required in Subsections 195.02.a and 195.02.c of these rules. ()

d. An applicant's *affiliation ends*, is *later re-affiliated to* the same agency, and the applicant background check was completed less than three (3) years from the time of the *re-affiliation*, the provisions of Subsections 195.02.b and 195.02.c of these rules apply. ()

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

f. An individual with a current clearance that is not Enhanced but is completed within three (3) years from date of employment, who *seeks to affiliate themselves* to a new agency identified in Section 126 of these rules, must *apply* for a new background check to obtain an *Enhanced* clearance. An agency or employer identified in Subsections 126.08 and 126.10 of these rules may not hire an employee with a clearance obtained prior to January 1, 2020, unless the Enhanced clearance complies with the requirements found in 42 USC Section 9858. ()

03. Agency Discretion. Any agency or employer, at its discretion, may require an individual to complete a Department background check at any time, even if the individual has received a background check clearance within three (3) years. ()

04. Department Discretion. The Department may require a background check of any individual covered under these rules at any time. Any individual required to complete a background check under these rules must be fingerprinted within fourteen (14) days from the date of notification by the Department. ()

196. -- 199. (RESERVED)

200. UNCONDITIONAL DENIAL.

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

01. Reasons for an Unconditional Denial. Unconditional denials are issued for: ()

a. Disqualifying crimes *under* Section 210 of these rules; ()

b. A relevant record on any Child Protection Registry for the classes of individuals *under* Section 126 of these rules; ()

c. A relevant record on the Idaho Child Protection Central Registry with a Level one (1) or Level two (2) designation for all other applicants covered by these rules; ()

d. A relevant record on the Nurse Aide Registry; ()

e. A relevant record on either the state or federal sex offender registries; ()

f. A relevant record on the U. S. Health and Human Services, Office of the Inspector General List of Excluded Individuals and Entities (LEIE); ()

g. A relevant record on the state Medicaid Exclusion List; or ()

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

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a background check. ()

03. Challenge of Department's Unconditional Denial. An individual has twenty-eight (28) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Background Check Unit. ()

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

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

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

201. -- 209. (RESERVED)

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the background check reveals a conviction for a disqualifying crime on their record *under* this rule. ()

01. Disqualifying Crimes. The disqualifying crimes *under* this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. ()

a. Crimes against vulnerable adults: ()

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

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

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

b. Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; ()

c. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6604, Idaho Code; ()

- d.** Hiring, employing, or using a minor to engage in certain acts, as defined in Section 18-1517A, Idaho Code; ()
- e.** Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code; ()
- f.** Incest, as defined in Section 18-6601, Idaho Code; ()
- g.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; ()
- h.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; ()
- i.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ()
- j.** Mayhem, as defined in Section 18-5001, Idaho Code; ()
- k.** Manslaughter:
 - i.** Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; ()
 - ii.** Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; ()
 - iii.** Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; ()
- l.** Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ()
- m.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; ()
- n.** Rape, as defined in Section 18-6101, Idaho Code; ()
- o.** Robbery, as defined in Section 18-6501, Idaho Code; ()
- p.** Felony stalking, as defined in Section 18-7905, Idaho Code; ()
- q.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ()
- r.** Ritualized abuse of a child, as defined in Section 18-1506A, Idaho Code; ()
- s.** Female Genital Mutilation, as defined in Section 18-1506B, Idaho Code; ()
- t.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506, Idaho Code; ()
- u.** Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code; ()
- v.** Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code; ()
- w.** Video voyeurism, as defined in Section 18-6605, Idaho Code; ()
- x.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ()
- y.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; ()
- z.** Any felony punishable by death or life imprisonment; ()
- aa.** Attempted strangulation, as defined in Section 18-923, Idaho Code; ()

- bb.** Felony domestic violence, as defined in Section 18-918, Idaho Code; ()
- cc.** Battery with intent to commit a serious felony, as defined in Section 18-911, Idaho Code; ()
- dd.** Assault with intent to commit a serious felony, as defined in Section 18-909, Idaho Code; or ()
- ee.** Aggravated sexual battery, as defined in Section 18-925, Idaho Code; ()
- ff.** Sexual abuse of an animal, as defined in Section 18-6602, Idaho Code; ()
- gg.** Sexual abuse of human remains, as defined in Section 18-6603, Idaho Code; or ()
- hh.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-304, 18-305, 18-306, 18-307, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ()

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in this rule, or any substantially conforming foreign criminal violation: ()

- a.** Any felony not described in Subsection 210.01, or 210.03 of this rule; ()
 - b.** Misdemeanor domestic violence, as defined in Section 18-918, Idaho Code; ()
 - c.** Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; ()
 - d.** Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; ()
 - e.** Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; ()
 - f.** Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; ()
 - g.** Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; ()
 - h.** Public assistance fraud, as defined in Sections 56-227, 56-227A, 56-227D, 56-227E and 56-227F, Idaho Code; ()
 - i.** Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; ()
 - j.** Stalking in the second degree, as defined in Section 18-7906, Idaho Code; ()
 - k.** Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; ()
 - l.** Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; ()
 - m.** Sexual Battery, as defined in Section 18-924, Idaho Code; ()
 - n.** Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; ()
- or
- o.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-204, 18-205, 18-304, 18-306, 18-307, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year

crimes. ()

03. Disqualifying Three-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for three (3) years from the date of the conviction for the crimes listed in this rule, or any substantially conforming foreign criminal violation: ()

a. A controlled substance manufacture, delivery, or possession with intent to deliver or manufacture offense, as defined in Section 37-2732, Idaho Code, felony; ()

b. A controlled substance paraphernalia offense, as defined in Section 37-2734B, Idaho Code, felony; or ()

c. Operating a motor vehicle under the influence of alcohol, drugs, or any other intoxicating substance offense, as defined in Section 18-8004, Idaho Code, felony. ()

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

a. A withheld judgment; ()

b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; ()

c. An order *under* Section 19-2604, Idaho Code, or other equivalent state law; or ()

d. A sealed record. ()

211. -- 269. (RESERVED)

270. CRIMINAL OR RELEVANT RECORD - ACTION PENDING.

01. Notice of Inability to Proceed. When the applicant is identified as having a pending criminal action for a crime or relevant record that may disqualify them from receiving a clearance for the background check, the Department may issue a notice of inability to proceed. ()

02. Availability to Provide Services. The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Department. Any previous clearance issued by the Department will be revoked as described in Section 190 of these rules. ()

03. Reconsideration of Action Pending. In the case of an inability to proceed status, the applicant can submit documentation that the matter has been resolved to the Department for reconsideration within one hundred and twenty (120) calendar days from the date of notice. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. When the Department's reconsideration results in a clearance after review, any previously revoked clearance will be restored as described in Section 190 of these rules. ()

271. -- 299. (RESERVED)

300. BACKGROUND CHECK RECORDS.

*B*ackground checks done under this chapter become the property of the Department and are held confidential. ()

01. Release of Background Check Records. A copy of the background check as defined in Section 010 of these rules will be released: ()

a. To the individual who has requested the background check and upon receipt of a written request to the Department, provided the individual releases the state from all liability; ()

b. In response to a subpoena issued by a court of competent jurisdiction; or ()

c. As otherwise required by law. ()

02. Department Retention of Records. *The Department will preserve all applicant background check records for six (6) years.* ()

03. Use and Dissemination Restrictions for FBI Criminal Identification Records. According to 28 CFR 50.12, the Department will: ()

a. Notify the individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; ()

b. In determining the suitability for licensing or employment, provide the individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record; ()

c. Notify the individual that they have fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and ()

d. Advise the individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are provided in 28 CFR 16.34. ()

301. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.06.02 – CHILD CARE AND FOSTER CARE LICENSING

DOCKET NO. 16-0602-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 39-1107, 39-1111, 39-1207, 39-1211, 39-1213, 56-1003, 56-1004A, 56-1005(8), and 56-1007, Idaho Code.

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

Under [Executive Order 2020-01](#) and the schedule set by the Division of Financial Management, this chapter underwent a complete rewrite. Additional requirements have been added for licensed foster parents to align with the state policy to assure that children in foster care receive care, services, and safe physical surroundings when they are unable to remain safely with their parent or legal guardian. The additional requirements will assist the state in maintaining standards for foster homes and child care institutions that are reasonably consistent with the final model licensing standards identified in Public Law 115-123. Additional rules will include updates to foster parent qualifications and suitability, foster parent training, home environment and safety requirements, and the maximum number of children in a foster home. Rules related to children's agencies and children's treatment facilities have been removed to an IDAPA chapter under licensing and certification, 16.04.18, "Children's Agencies and Residential Licensing." The title of this IDAPA chapter, 16.06.02, is changing to "Child Care and Foster Care Licensing."

Changes to text being made at this pending stage are to clarify the proposed language, eliminate obsolete language, and streamline rule text.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, [Vol. 22-9, pages 157 through 195](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 39-1107 and 56-1007, Idaho Code. There are no additional changes to fees paid by childcare providers for licensing in this chapter of rule.

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 is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact:

- FACS - Julie Sevcik (208) 863-4229, and Michelle Weir (208) 334-5651
- Self-Reliance - Ericka Rupp (208) 224-5641, and Marilyn Peoples (208) 442-9989

DATED this 7th day of November, 2022.

Trinette Middlebrook and Frank Powell
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-1107, 39-1111, 39-1207, 39-1211, 39-1213, 56-1003, 56-1004A, 56-1005(8), and 56-1007, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Virtual Public Hearing via WebEx
Tuesday, September 20, 2022 5:00 p.m. to 7:00 p.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=m76d5d134d0e6b722493699e4837da1d9
Join by meeting number Meeting number (access code): 2762 142 2199 Meeting password: TSw4x8tJ4bm (87949885 from phones and video systems)
Tap to join from a mobile device (attendees only) +1-415-527-5035,,27621422199#87949885# United States Toll +1-303-498-7536,,27621422199#87949885# United States Toll (Denver) Some mobile devices may ask attendees to enter a numeric password.
Join by phone +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

<p align="center">Virtual Public Hearing via WebEx</p>
<p align="center">Friday, September 23, 2022 10:00 a.m. to 12:00 p.m. (MT)</p>
<p align="center">Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=m2479a71d7d04956c8df82935987d003b</p> <p align="center">Join by meeting number Meeting number (access code): 2762 209 9532 Meeting password: 4xXM4K3X85s (49964539 from phones and video systems)</p> <p align="center">Tap to join from a mobile device (attendees only) +1-415-527-5035,,27622099532#49964539# United States Toll +1-303-498-7536,,27622099532#49964539# United States Toll (Denver) Some mobile devices may ask attendees to enter a numeric password.</p> <p align="center">Join by phone +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)</p>

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:

Under [Executive Order 2020-01](#) and the schedule set by the Division of Financial Management, this chapter underwent a complete rewrite. Additional requirements have been added for licensed foster parents to align with the state policy to assure that children in foster care receive care, services, and safe physical surroundings when they are unable to remain safely with their parent or legal guardian. The additional requirements will assist the state in maintaining standards for foster homes and child care institutions that are reasonably consistent with the final model licensing standards identified in Public Law 115-123. Additional rules will include updates to foster parent qualifications and suitability, foster parent training, home environment and safety requirements, and the maximum number of children in a foster home. Rules related to children's agencies and children's treatment facilities have been removed to an IDAPA chapter under licensing and certification. The title of this chapter is changing to "Child Care and Foster Care Licensing."

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

Under this chapter, non-refundable Daycare fees must be paid to the Department prior to the issuance or renewal of a daycare license. The fee is determined by size and type of daycare center or facility. None of the fees in this chapter of rules are being changed.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 2, 2022 and April 6, 2022, Idaho Administrative Bulletins, [Vol. 22-3, pages 18-21](#), and [Vol. 22-4, pages 32-34](#).

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: The documents incorporated by reference in these rules are not being changed.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact the following:

- FACS - Julie Sevcik (208) 863-4229, and Michelle Weir (208) 334-5651
- Self-Reliance - Ericka Rupp (208) 224-5641, and Marilyn Peoples (208) 442-9989

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 5th day of August, 2022.

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 16-0602-2201

16.06.02 – CHILD CARE AND FOSTER CARE LICENSING

000. LEGAL AUTHORITY.

Under Sections 39-1107, 39-1111, 39-1207, 39-1211, 39-1213, 56-1003, 56-1004A, 56-1005(8), and 56-1007, Idaho Code, the Idaho Legislature authorizes the Department and the Board to adopt and enforce rules for licensing daycare centers, group daycare facilities, family daycare homes, and foster homes. ()

001. SCOPE *AND* POLICY.

01. Scope. These rules establish requirements for licensing, maintaining, and operating the following facilities: ()

- a. Daycare centers; ()
- b. Group daycare facilities; ()
- c. Family daycare homes (voluntarily); and ()
- d. Foster homes. ()

02. Policy. It is the Department’s policy to assure that children receive adequate substitute parental care in the absence or temporary or permanent inability of parents to provide care and protection for their children, or the parents are seeking alternative twenty-four (24) hour long-term care for their children. This policy is because children are vulnerable and not capable of protecting themselves. When parents have relinquished their children’s care to others, there arises the possibility of risks to those children’s lives, health, and safety. This requires the Department oversight of licensing and registration found in these rules. ()

002. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference in this chapter of rules. ()

01. Occupational Safety Health Act (OSHA). A copy of OSHA may be obtained at the Idaho Industrial Commission, 317 Main Street., P.O. Box 83720, Boise, Idaho, 83720-0041. ()

02. Crib Safety. Consumer Product Safety Commission, Crib Safety Tips can be found on the Internet

at <https://www.cpsc.gov/Regulations-Laws--Standards/Rulemaking/Final-and-Proposed-Rules/Full-Size-Cribs>.

()

003. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Background Check. Background checks are required for individuals who are licensed under these rules. Individuals who are required to have background checks must comply with IDAPA 16.05.06, "Criminal History and Background Checks," except for those individuals described in Subsection 009.04 of this rule. ()

02. When License is Granted. The applicant(s) and any other adult(s) living in a foster home must have a completed background check, including clearance, prior to licensure. ()

03. Individuals Subject to Background Check Requirements. The following individuals must receive background check clearance prior to licensure: ()

a. Adoptive Parents. The background check requirements are found in *IDAPA 16.04.18, "Children's Agencies and Residential Licensing,"* Section 009. ()

b. Daycare Center, Group Daycare Facility, and Family Day Care Home. The background check requirements are found in Section 309 of these rules and in Sections 39-1105, 39-1113, and 39-1114, Idaho Code. ()

c. Licensed Foster Care Home. The background check requirements are found in Section 403 of these rules and in Section 39-1211(4), Idaho Code. ()

04. Exceptions to Background Checks for Certain Youths. Background checks are optional for certain youth placed in licensed foster homes and licensed residential care facilities such as youth in foster care who reach the age of eighteen (18) but are less than twenty-one (21) years old age and continue to reside in the same licensed foster home. ()

05. Background Check at Any Time. The Department can require a background check at any time on any individual who: ()

a. Is a resident or an adult living in a licensed foster home; or ()

b. Is an owner, operator, daycare center staff, group daycare facility, family daycare home, and all other individuals who are thirteen (13) years old or older who have unsupervised direct contact with children or who are regularly on the premises. ()

010. DEFINITIONS A THROUGH M.

01. Attendance. Under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, the number of children present at a daycare facility at any given time. ()

02. Board. The Idaho State Board of Health and Welfare. ()

03. Caregiver. A foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed. ()

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

05. Child. ()

a. Under Title 39, Chapter 12, Idaho Code, and Sections 400 through 999 of these rules, “child” means an individual less than eighteen (18) years old, synonymous with juvenile or minor. ()

b. Includes individuals age eighteen (18) to twenty-one (21) who are ordered into or voluntarily entered Extended Foster Care through Child and Family Services. ()

c. Under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “child” means an individual less than thirteen (13) years old. ()

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

07. Child-Staff Ratio. The maximum number of children allowed under the care and supervision of one (1) staff person. ()

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

09. Continued Care.

a. The ongoing placement of an individual in a foster home or transitional living placement who reaches the age of eighteen (18) years but is less than twenty-one (21) years old. ()

b. Includes Extended Foster Care for children placed through Child and Family Services. ()

10. Daycare. The care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood, marriage, adoption, or legal guardianship to the person(s) providing the care, in a place other than the child’s or children’s own home. ()

11. Daycare Center. A place or facility providing daycare for compensation for thirteen (13) or more children. ()

12. Department. The Idaho Department of Health and Welfare and its authorized representatives. ()

13. Direct Care Staff. An employee who has direct personal interaction with children in the provision of child care and is included as staff in meeting the child-staff ratio requirements. ()

14. Family Daycare Home. A home, place, or facility providing daycare for six (6) or fewer children. ()

15. Foster Care. The twenty-four (24) hour substitute parental care for children placed away from their parents or guardians by persons who may or may not be related to the child and for whom the state agency has placement and care responsibility. ()

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

17. Foster Parent. A person(s) residing in a private home under their direct control to whom a foster care license has been issued. ()

18. Group Daycare Facility. A home, place, or facility providing daycare for seven (7) to twelve (12)

children. ()

19. Medical Professionals. Persons who have received a degree in nursing or medicine and are licensed as a registered nurse, nurse practitioner, physician’s assistant, or medical doctor. ()

20. Household Member. Any person, other than a foster child, who resides in, or on the property of, a foster home. ()

011. DEFINITIONS N THROUGH Z.

01. Noncompliance. Violation of, or inability to meet the requirements of these rules or terms of licensure. ()

02. Operator. An individual who operates or maintains a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department. ()

03. Person. Any individual, group of individuals, associations, partnerships, or corporations. ()

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

05. Plan of Correction. The detailed procedures and activities developed between the Department and caregiver required to bring a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, or foster family into conformity with these rules. ()

06. Regularly on the Premises. For Sections 009 and 309 of these rules, “regularly on the premises” means twelve (12) hours or more in any one (1) month, or daily during any hours of operation. ()

07. Relative. Under Section 39-1202, Idaho Code, “relative” means a child’s grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling, and half-sibling. ()

08. Restraint. Physical interventions to control the range and motion of a child. ()

09. Second Degree of Relationship. Refers to persons related by blood or marriage, and includes their spouses. The number of degrees between two (2) relatives is calculated by summing the number of ties between each relative and the common ancestor. ()

10. Social Worker. An individual licensed under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the State Board of Social Work Examiners.” ()

11. Staff. Under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “staff” means a person who is sixteen (16) years old or older and employed by a daycare owner or operator to provide care and supervision at a daycare facility. ()

12. Supervision. Under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “supervision” is defined as within sight and normal hearing range of the child or children being cared for. ()

13. Time-Out. Separation of a child from group activity as a means of behavior management. ()

14. Training. The preparation, instruction, and education related to child care that increases the knowledge, skill, and abilities of a foster parent or children’s agency or volunteers. ()

15. Variance. A temporary non-application of a foster care licensing rule that is resolved within six (6) months of approval. ()

16. Waiver. The permanent non-application of a foster care licensing rule for relatives, if in the

Department's judgment, the health and safety of the child is not compromised. ()

012. -- 099. (RESERVED)

LICENSING
(Sections 100-299)

100. LICENSING.

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

01. **Responsibilities of the Foster Parent or Operator.** A foster parent or operator must conform to the terms of the license. ()

02. **Responsible for Knowledge of Standards.** The foster parent or operator is responsible for knowing the rules applying to the type of foster home, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, covered by the license, and for always conforming to them. ()

03. **Responsible for Agency Staff Knowledge.** The operator of a child care facility or agency is responsible for ensuring that all staff members are familiar with these rules. ()

04. **Return of License.** The foster parent or operator must immediately return their license to the Department under any of the following circumstances: ()

a. Changes of management or address; ()

b. Upon suspension or revocation of the license by the Department; or ()

c. Upon voluntary discontinuation of service. ()

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

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

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

c. The operation of a private school or religious school for educational purposes for children over four (4) years old, or a religious kindergarten; ()

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

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

f. The provision of care for children of a family within the second degree of relationship under Section 011 of these rules. ()

06. **Exceptions and Exemptions to Daycare and Foster Home Licensing.** Under Sections 39-1213(b) and 39-1211, Idaho Code, the licensing requirements in these rules do not apply to: ()

a. Foster homes approved by a licensed children's agency provided the standards for approval by such agency are no less restrictive than the rules established by the Board and that such agency is maintained, ()

operated, and conforms with these rules; or ()

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

101. APPLICATIONS FOR LICENSE.

An application for a license must be submitted to the Department. Licensing studies will follow the format of these rules and will contain a specific recommendation for terms of the license. All foster homes, daycare centers, group daycare facilities, and family daycare homes voluntarily licensed by the Department must comply with applicable city and county ordinances. ()

102. DISPOSITION OF APPLICATIONS.

The Department will initiate action on each completed application within thirty (30) days after receipt that addresses each requirement for the specific type of home or facility. Upon receipt of a completed application and study, the Department will review the materials for compliance with these rules. ()

01. Approval of Application. A license will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, or foster home found in compliance with these rules. The license is issued under the terms specified in the licensing study and will be mailed to the applicant. ()

02. Regular License. A regular license will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, or foster home found in compliance with these rules and will specify the terms of licensure, such as: ()

a. Full time or daycare; ()

b. The number of children who may receive care at any one (1) time; and ()

c. Age range and gender, if there are conditions in the foster home making such limitations necessary; ()

d. The regular license for a foster home is in effect for one (1) year from the date of issuance unless suspended or revoked earlier; ()

e. A regular license for a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department is in effect for two (2) years from the date of issuance unless suspended or revoked earlier; and ()

f. If the license for a foster home is for a specific child only, the name of that child will be shown on the foster home license. ()

03. Waiver. A regular license may be issued to the foster home of a relative who has received a waiver of licensing rules provided: ()

a. The waiver is considered on an individual case basis; ()

b. The waiver is approved only for non-safety foster care rules; ()

c. All other licensing requirements have been met; ()

d. The approval of a waiver of any foster home rules requires the Department to document a description of the reasons for issuing a waiver, the rules being waived, and assurance that the waiver will not compromise the child's safety; and ()

e. The approved waiver must be reviewed for continued need and approved annually. ()

04. Variance. A regular license will be issued to a foster home approved for a variance of a licensing

rule provided: ()

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

05. Provisional License. A provisional license may be issued to a foster home, when a licensing standard cannot be met but can be expected to be corrected within six (6) months, provided this does not affect the health, safety, and well-being of any child in care at the home. ()

- a. A provisional license will be in effect for not more than six (6) months. ()
- b. Only one (1) provisional license will be issued to a foster home in any twelve-month period of time under Section 39-1216, Idaho Code. ()

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

- a. The child is already in the home and has formed strong emotional ties with the foster parents; and ()
- b. It can be shown that the child's continued placement in the home would be more conducive to their welfare than would removal to another home. ()

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

08. Failure to Complete Application Process. ()

- a. Failure of the applicant to complete the application process within six (6) months of the original date of application will result in a denial of the application. ()
- b. An applicant whose application has been denied for being incomplete may not reapply until after one (1) year has elapsed from the date on the denial of application. ()

103. RESTRICTIONS ON APPLICABILITY AND NONTRANSFER.

01. Issued License. A license applies only to the foster home, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, or the person and premises designated. Each license is issued in the business name or individual name, and only to the specified address identified on the application of the foster home, daycare center, group daycare facility or family daycare home voluntarily licensed by the Department. A license issued in the name of a foster parent, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department applies only to the period and services specified in the license. Any change in management or address renders the license null and void, and the foster parent or operator must immediately return the license to the Department under Section 100 of these rules. ()

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

03. Change in Ownership, Operator, or Location. When there is a change in ownership, operator, or location, the foster home, daycare center, group daycare facility or family daycare home voluntarily licensed by the Department must reapply for a license under Section 101 of these rules. The new owner or operator must obtain a license before starting operations. ()

104. MANDATORY VISITATIONS.

Under Section 39-1217, Idaho Code, the Department must visit and be given access to the premises of each licensed foster home, as often as deemed necessary by the Department to assure compliance with these rules but at intervals not to exceed twelve (12) months. ()

105. REVISIT AND RELICENSE.

Revisit and relicense studies will document how the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, or foster home continues to meet licensing standards. Consideration must be given to each standard, including a review of the previous study and original application to determine what changes have occurred. An application for renewal of a license must be made by the operator on the form furnished by the Department and filled out prior to the expiration date of the license currently in force. When a renewal application has been completed correctly, the existing license will, unless officially revoked, remain in force until the Department has acted on the application for renewal. ()

106. COMPLAINTS AGAINST DAYCARE CENTERS, GROUP DAYCARE FACILITIES, FAMILY DAYCARE HOMES, AND FOSTER HOMES.

01. Investigation. The Department will investigate complaints regarding daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, or foster homes. The investigation may include further contact with the complainant, scheduled or unannounced visits to the foster home, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, collateral contacts including interviews with the victim, parents or guardian, operator, staff, consultants, children in care, other persons who may have knowledge of the complaint, and inspections by fire or health officials. ()

02. Informed of Action. If an initial preliminary investigation indicates that a more complete investigation must be made, the foster parents, operator, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department will be informed of the investigation, and any action to be taken, including referral for civil or criminal action. ()

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

When circumstances occur over which the foster parent or operator has no control including illness, epidemics, fire, flood, or contamination, which temporarily place the operation of the foster home, child care facility, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department out of compliance with these rules, the license must be suspended until the nonconformity is remedied. ()

108. SUSPENSION OR REVOCATION FOR INFRACTIONS.

A license may be suspended for infractions of these rules. Such suspension may lead to revocation if the foster parent or operator fails to satisfy the Department that the infractions have been corrected in compliance with the rules. ()

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

If it is found that an applicant, foster parent, or operator has failed or refused to comply with any of the provisions of the Basic Daycare License Law, Sections 39-1101 through 39-1120, Idaho Code, or the Child Care Licensing Reform Act, Sections 39-1201 through 39-1224, Idaho Code, with these rules, or with any provision of the license, the Department may deny, suspend, revoke, or not renew a license. The Department may also deny, suspend, revoke, or deny renewal of a license for any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, child care facility or foster home when any of the following occurs. ()

01. Criminal Conviction or Relevant Record. Anyone providing direct care or working onsite under these rules is denied clearance or refuses to comply with IDAPA 16.05.06, "Criminal History and Background Checks." ()

02. Other Misconduct. The applicant, foster parent, operator, or the person proposed as chief executive officer: ()

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

b. Has been found guilty of or is under investigation for fraud, deceit, misrepresentation or dishonesty associated with the operation of a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility or children's agency; ()

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

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

e. Has knowingly permitted, aided, or abetted the commission of any illegal act on the premises of the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, or foster home. ()

110. (RESERVED)

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

The Department may summarily suspend a foster home, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department. Children in a foster home require the program to transfer children when the Department has determined a child's health and safety are in immediate jeopardy. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, will not be transported from the home or facility, instead the parent or legal guardian will be contacted. ()

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

The Department may revoke the license of a foster home, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, when the Department determines the home, facility, or operator is not in compliance with these rules. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, will not be transported from the facility, instead the parent or legal guardian will be contacted. Revocation and transfer of children may occur under the following circumstances: ()

01. Endangers Health or Safety. Any condition that endangers the health or safety of any child. ()

02. Not in Substantial Compliance. A foster home, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department is not in substantial compliance with these rules. ()

03. No Progress to Meet Plan of Correction. A foster home, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted a plan of correction. ()

04. Repeat Violations. Repeat violations of any requirement of these rules or provisions of Title 39, Chapters 11 and 12, Idaho Code. ()

05. Misrepresented or Omitted Information. A foster home, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department has knowingly misrepresented or omitted information on the application or other documents pertinent to obtaining a license. ()

06. Refusal to Allow Access. Refusal to allow Department representatives full access to the foster

home, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department and its grounds, facilities, and records. ()

07. Violation of Terms of Provisional License. A foster home, that has violated any of the terms or conditions of a provisional license. ()

113. EFFECT OF PREVIOUS REVOCATION OR DENIAL OF A LICENSE.

An organization cannot apply and the Department will not accept an application from any person, corporation, or partnership, including any owner with a ten percent (10%) or more interest, who has had a license denied or revoked, until five (5) years has elapsed from the date of denial, revocation, or conclusion of a final appeal, whichever occurred last. ()

114. -- 299. (RESERVED)

**STANDARDS FOR DAYCARE
(Sections 300-399)**

300. STANDARDS FOR DAYCARE.

01. Daycare Standards. In addition to meeting the rules under Sections 000 through 299 of these rules, each owner, operator, or applicant seeking licensure from the Department as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must also meet the requirements under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules. ()

02. Minimum Age of Applicant. An individual, applying to the Department to be licensed for a daycare center, group daycare facility, or family daycare home, must be at least eighteen (18) years old. ()

301. TYPES OF DAYCARE LICENSES.

Subject to the requirements under Title 39, Chapter 11, Idaho Code, and these rules, the Department will determine the type of daycare license required by an owner or operator providing daycare by counting each child in attendance, regardless of relationship to the person(s) providing the care. The following types of daycare licenses may be issued by the Department. ()

01. Daycare Center License. Is issued for a place or facility providing daycare, where thirteen (13) or more children, regardless of relationship to the person(s) providing the care, are in attendance. ()

02. Group Daycare Facility. Is issued for a place or facility providing daycare, where seven (7) to twelve (12) children, regardless of relationship to the person(s) providing the care, are in attendance. ()

03. Family Daycare Home. Is not required to be licensed. However, a family daycare home may voluntarily elect to be licensed by the Department. ()

302. -- 308. (RESERVED)

309. CRIMINAL HISTORY AND BACKGROUND CHECK FOR DAYCARE STANDARDS.

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

a. Owners, operators, and staff; ()

b. All other individuals thirteen (13) years old or older who have unsupervised direct contact with children; or ()

c. All other individuals thirteen (13) years old or older who are regularly on the premises. ()

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

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

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

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

05. Cost of Background Check and Juvenile Justice Records. Each individual who requests and obtains a Department background check is responsible for the cost of the background check and check of juvenile justice records. ()

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

310. -- 319. (RESERVED)

320. DAYCARE LICENSING FEES.

A nonrefundable licensing fee must be paid to the Department prior to the issuance or renewal of a daycare license. ()

01. Daycare Licensing Fee Amounts. The total fee for initial licensure or renewal of a daycare center, group daycare facility, or family daycare home voluntarily licensed must not exceed the following amounts: ()

- a. Daycare center with more than twenty-five (25) children in attendance at any given time - three hundred twenty-five dollars (\$325). ()
- b. Daycare center with thirteen (13) to twenty-five (25) children in attendance at any given time - two hundred fifty dollars (\$250). ()
- c. Group daycare facility - one hundred dollars (\$100). ()
- d. Family daycare home voluntary license - one hundred dollars (\$100). ()

02. Daycare Fire Inspection Fee. Daycare fire inspection fees are payable to the local fire department or fire district official. ()

321. APPLICATION FOR DAYCARE LICENSE OR RENEWAL.

Any individual applying for licensure as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must be at least eighteen (18) years old. The applicant must apply on forms provided by the Department and provide information required by the Department under this rule. ()

- 01. Completed, Signed, and Dated Application by Applicant.** ()
- 02. Licensing Fee.** The applicant must pay the appropriate licensing fee prior to the issuance of a daycare license. ()
- 03. Inspection Reports.** The following reports must be submitted to the Department with the application that prove the facility or proposed facility meets: ()
 - a.** Building code under IDAPA 24.39.30, “Rules of Building Safety (Building Code Rules),” where required; ()
 - b.** Electrical code under IDAPA 24.39.10, “Rules of the Idaho Electrical Board,” where required; ()
 - c.** Fire code under Section 41-253, Idaho Code, where required; and ()
 - d.** Local planning and zoning requirements. ()
- 04. Proof of Insurance.** The applicant must provide proof of current fire and liability insurance coverage for the daycare facility. ()
- 05. Background Clearance.** Evidence that the applicant and all individuals required to have a criminal history and background check have received a clearance from the Department required in Section 309 of these rules. ()
- 06. Statement to Comply.** The applicant must provide a written statement that these rules have been thoroughly read and reviewed and the applicant is prepared to comply with all provisions. ()
- 07. Statement Disclosing Revocation or Disciplinary Actions.** A written statement that discloses any revocation or other disciplinary action taken or in the process of being taken against the applicant as a daycare provider in any jurisdiction, or a statement from the applicant stating they have never been involved in any such action. ()
- 08. Other Information as Requested.** The applicant must provide other information that may be requested by the Department for the proper administration and enforcement of these rules. ()
- 09. Additional Requirements for License Renewal.** A daycare license must be renewed every two (2) years. The daycare operator must submit to the Department the renewal application, fee, and all required documentation in this rule at least forty-five (45) days prior to the expiration of the current daycare license. ()
- 10. Termination of Application Process.** Failure of the applicant to cooperate with the Department in the application process may result in the termination of the application process. Failure to cooperate means that the information requested is not provided within ninety (90) days, or not provided in the form requested by the Department, or both. ()

322. -- 324. (RESERVED)

325. ISSUANCE OF LICENSE.

- 01. Department Action.** The Department will order a health and safety inspection of the daycare facility once the application for licensure is complete and the licensing fee has been paid. ()
- 02. Issuance of a Regular License.** If the Department determines the applicant is in compliance with

these rules, the Department will, within sixty (60) days from the date the completed application is submitted, issue one (1) of the following licenses stating the type of facility, the number of children who may be in attendance, and the length of time the license is effective: ()

- a. Daycare Center License; ()
- b. Group Daycare Facility License; or ()
- c. Family Daycare Home License. ()

03. Denial of Licensure. If the Department determines the applicant is not in compliance with these rules and further determines not to issue a daycare license the Department will, within thirty (30) days from the date the completed application is submitted, issue a letter of denial of licensure stating the basis for the denial. ()

04. Incomplete Application. The Department is not required to take any action on an application until the application is complete. ()

05. Notification of License Renewal. The Department will notify the licensed daycare operator at least ninety (90) days prior to expiration of the license. ()

06. List of Licensed Daycare Facilities. The Department will maintain a list of all licensed daycare facilities for public use. ()

326. -- 329. (RESERVED)

330. STAFF AND OTHER RECORD REQUIREMENTS.

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

- 01. Legal Name. ()
- 02. Proof of Age. ()
- 03. Phone Number. ()
- 04. Training Records. ()
- 05. Verification of Background Check Clearance. ()
- 06. Results of Juvenile Justice Records. ()
- 07. Verification of Pediatric Rescue Breathing, Infant-Child CPR, and First Aid Certification from a Certified Instructor. ()
- 08. Times, Dates, and Records of Hours on the Premises Each day. ()

331. CHILD RECORD REQUIREMENTS.

Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must maintain records for each child in attendance covering the previous twelve-month period. The record must contain the following: ()

- 01. Child's Full Name. ()
- 02. Date of Birth. ()

- 03. Parent or Guardian’s Name, Address, and Contact Information. ()
- 04. Emergency Contact Information. ()
- 05. Child's Health Information. ()
 - a. Immunization record or waiver of exemption form or statement; ()
 - b. Any medical conditions that could affect the care of the child; and ()
 - c. Medications the child is taking or may be allergic to. ()
- 06. Times, Dates, and Record of Attendance Each Day. ()

332. -- 334. (RESERVED)

335. CHILD-STAFF RATIO.

Under Section 39-1109, Idaho Code, the Department determines the maximum allowable child-staff ratio based on a point system. ()

01. Daycare Child-Staff Ratio Point System.

The maximum allowable points for each staff member is twelve (12), using the following point system which is based on the age of each child in attendance: ()

- a. Under the age of twenty-four (24) months, each child equals two (2) points. ()
- b. From the age of twenty-four (24) months to under the age of thirty-six (36) months, each child equals one and one-half (1 1/2) points. ()
- c. From the age of thirty-six (36) months to under the age of five (5) years, each child equals one (1) point. ()
- d. From the age of five (5) years to under the age of thirteen (13) years, each child equals one-half (1/2) point. ()

02. Compliance with Child-Staff Ratios. Child-staff ratios must always be maintained during all hours of operation when children are in attendance and when transporting children. ()

- a. Each child in attendance is counted by the Department for the purposes of calculating maximum allowable points, counting the number of children in attendance, and for determining compliance with child-staff ratios; ()
- b. Each adult staff member who is providing direct care for a child or children is counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios; and ()
- c. Each staff member sixteen (16) and seventeen (17) years old under the supervision of an adult staff member, when providing direct care for a child or children, may be counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios. ()

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

- a. Always awake and on duty on the premises during regular business hours or when children are in

attendance, and ()

b. Currently certified in pediatric rescue breathing, infant-child CPR, and first aid. ()

04. Napping Children. Napping children who are not within sight of a staff member must always be within easy hearing distance. ()

05. Overnight Daycare. For daycare operators providing overnight care of children, the following must apply: ()

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

b. A staff member must be awake and on duty to release and receive a child. ()

336. BEHAVIOR MANAGEMENT AND DISCIPLINE.

Methods of behavior management and discipline for children must be positive and consistent. These methods must be based on each child's needs, stage of development, and behavior. Discipline is to promote self-control, self-esteem, and independence. All of the following types of punishment of a child are prohibited: ()

01. Physical Force. Any kind of punishment inflicted on the body, including spanking; ()

02. Cruel and Unusual Physical Exercise. Includes forcing a child to take an uncomfortable position; ()

03. Use of Excessive Physical Labor. With no benefit other than for punishment; ()

04. Restraint(s). ()

05. Locking a Child in a Room. Or any area of the home or facility; ()

06. Denying Necessities. Includes necessary food, clothing, bedding, rest, toilet use, personal care and sanitation, or entrance to the home or facility; ()

07. Mental or Emotional Cruelty. ()

08. Verbal Abuse. Includes ridicule, humiliation, profanity, threats, or other forms of degradation directed at a child or a child's family. ()

337. -- 339. (RESERVED)

340. DAYCARE CENTER TRAINING REQUIREMENTS.

Each owner or operator of a daycare center licensed by the Department must receive and ensure that each staff member receives and completes four (4) hours of ongoing training every twelve (12) months after the staff member's date of hire. ()

01. Child Development Training. Training must be related to continuing education in child development. ()

02. Training Hours. It is the responsibility of the owner or operator of the daycare center to ensure that each staff member has completed four (4) hours of training each year. The training must be documented in the staff member's record. ()

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

04. Staff Training Records. Each owner or operator of the daycare center is responsible for maintaining documentation of staff's training and may be asked to produce documentation at the time of license renewal. ()

341. -- 344. (RESERVED)

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

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

346. VISITATION AND ACCESS.

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

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

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

347. -- 349. (RESERVED)

350. FIRE SAFETY STANDARDS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire safety standards in this rule. ()

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

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

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

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

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

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

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

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

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

ii. In lieu of egress windows, an approved exit door is acceptable. ()

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

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

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

351. FACILITY CAPACITY AND DETERMINING OCCUPANT LOAD.

Occupant load is determined by the local fire official or designee. ()

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

02. Facilities with an Occupancy Load of Fifty or More. Facilities with an occupancy load of fifty (50) or more occupants must meet the requirements in Section 350 of these rules in addition to this rule. ()

a. Exit doors must swing in the direction of egress. ()

b. Exit doors from rooms, if provided with a latch, must have panic hardware installed. ()

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

352. FIRE EXTINGUISHERS AND SAFETY REQUIREMENTS.

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

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

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

03. Fire Extinguishers. Approved fire extinguishers must be maintained properly. ()

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

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

- 06. Smoke Detectors.** Smoke detectors must be installed and maintained in the following locations: ()
- a.** On the ceiling, wall outside, or each separate sleeping area in the immediate vicinity of bedrooms; ()
 - b.** In each room used for sleeping purposes; and ()
 - c.** In each story within a facility including basements. ()
 - d.** If there is a basement, there must be a smoke detector installed in the basement having a stairway which opens from the basement into the facility. Such detector must be connected to a sounding device or other detector to provide an alarm which is audible in the sleeping area. ()

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

353. FIRE SAFETY AND EVACUATION PLANS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must have an approved fire safety and evacuation plan prepared that includes the following: ()

- 01. Evacuation.** Procedures and policies for accounting for staff and children after an evacuation is completed. ()
- 02. Evacuation Plan and Assembly Point for Children and Staff.** ()
- 03. Locations of Facility Exits.** ()
- 04. Evacuation Routes.** ()
- 05. Location of Fire Alarms.** ()
- 06. Location of Fire Extinguishers.** ()
- 07. Annual Review.** Fire safety and evacuation plans must be reviewed or updated annually and available in the facility for reference and review. ()
- 08. Frequency of Fire and Emergency Evacuation Drills.** Fire and evacuation drills must be conducted on a routine schedule and all staff and children must participate. ()

354. -- 359. (RESERVED)

360. HEALTH STANDARDS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the following. Health inspections will be completed by a qualified inspector designated by the Department. ()

- 01. Food Source.** Food must be from an approved source under IDAPA 16.02.19, "Idaho Food Code." Food must not be served past expiration or "use by" date. ()
- 02. Food Preparation.** Food for use in daycare facilities must be prepared and served in a sanitary manner with sanitized utensils and on surfaces that have been cleaned, rinsed, and sanitized prior to use to prevent cross-contamination. ()
 - a.** Frozen food must be thawed in the refrigerator, under cold running water, or as part of the cooking process. Food must be cooked to proper temperatures under IDAPA 16.02.19, "Idaho Food Code." ()

b. Individuals preparing food must use proper hand-washing techniques, minimize bare hand contact with food, and wear clean clothes. ()

03. Food Temperatures. Potentially hazardous foods must be kept refrigerated at forty-one degrees Fahrenheit (41°F) or below, held hot at one hundred thirty-five degrees Fahrenheit (135°F) or more, and reheated or cooled at safe temperatures under IDAPA 16.02.19, “Idaho Food Code.” Refrigerators must be equipped with an accurate thermometer. ()

04. Food Storage. All food that is served in daycare facilities must be stored in such a manner that protects it from potential contamination. There must be no evidence of pests present in the daycare facility. ()

05. Food Contact Surfaces. Food contact surfaces must be kept clean and sanitized, including counters, serving tables, high chair trays, and cutting boards. ()

06. Dishwashing Sanitizing. Dishes, glasses, utensils, silverware, and all other objects used for food preparation and eating must be sanitized using appropriate sanitizing procedures. ()

07. Utensil Storage. Clean utensils must be stored on clean shelves or drawers and not subject to recontamination, and sharp knives and other sharp objects be kept out of reach of children. ()

08. Garbage. Garbage must be kept covered or inaccessible to children. ()

09. Hand Washing. Children and facility staff must be provided with individual or disposable towels for hand drying, and the hand washing area be equipped with soap and warm and cold running water. ()

10. Diaper Changing. Diaper changing must be conducted in such a manner as to prevent the spread of communicable diseases, be separate from food preparation and serving areas, and have easy access to a hand-washing sink. ()

11. Sleeping Areas. Children sleeping at the facility must have separate cots, mats, or beds and blankets. ()

12. Restrooms, Water Supply, and Sewage. All daycare facilities must have restrooms. ()

a. Each facility must have at least one (1) flushable toilet and at least one (1) hand washing sink with warm and cold water per restroom. ()

b. Plumbing and bathroom fixtures must be in good condition. ()

c. All daycare facilities and homes must comply with IDAPA 24.39.30, “Rules of Building Safety (Building Code Rules).” ()

13. Water Supply. The facility's water supply must meet one (1) of the following requirements: ()

a. Be from a public water system that is maintained under IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” at the time of initial or renewal application; or ()

b. Be from a private source, such as well or spring, be tested annually for bacteria and nitrate, and be approved by the Department. ()

c. Water used for consumption at a daycare facility is from an acceptable source. Temporary use of bottled water or boiled water may be allowed for a period specified by the Department. ()

14. Sewage Disposal. Facility sewage must be disposed of through a public system, or in the absence of a public system, in a manner approved by the local health authority under IDAPA 58.01.03 “Individual/Subsurface

Sewage Disposal Rules.” ()

15. Use of Alcohol and Illegal Drugs. Alcohol and illegal drugs must not be used by operators, children, staff, volunteers, visitors at daycare facilities, in the presence of children during hours of operation, or in vehicles while transporting children. ()

a. Any individual under the influence of alcohol or drugs is not be permitted at or in the daycare facility. ()

b. Illegal drugs are prohibited by law and therefore are not allowed on the premises of a licensed daycare facility at any time. ()

16. Smoke-Free Environment. Children must be afforded a smoke-free environment during all daycare hours, whether indoors or outdoors. While children are in care, the operator and all staff must ensure that no smoking or other tobacco use occurs within the facility, in outdoor areas, or in vehicles when children are present. ()

17. Medication. No person can administer any medication to a child without it first being authorized by a parent or caretaker. All medications, refrigerated or unrefrigerated, must be in a locked box or otherwise inaccessible to children. ()

18. Adequate Heat, Light, and Ventilation. A daycare facility must have adequate heat, light, and ventilation. Windows and doors must be screened if used for ventilation. ()

19. Immunizations. Daycare operators must comply with requirements under IDAPA 16.02.11, “Immunization Requirements for Licensed Day care Facility Attendees.” ()

361. MISCELLANEOUS SAFETY REQUIREMENTS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with the following. ()

01. Telephone. An operable telephone or cell phone must always be available in the facility with the following conditions: ()

a. The telephone number used must be made available to parents and guardians. ()

b. Emergency phone numbers to include 911, an adult emergency substitute operator, and the address and phone number of the facility must be posted by the telephone or in a location that is easily and always visible. ()

02. Heat-Producing Equipment. A furnace, fireplace, wood-burning stove, water heater, and other flame or heat-producing equipment must be installed and maintained as recommended by the manufacturer and protected on all surfaces by screens or other means. ()

03. Portable Heating Devices. Portable heating devices must be limited and approved for use and location by the Fire Inspector prior to use within a facility. ()

04. Storage of Weapons, Firearms, and Ammunition. Firearms or other weapons stored at a daycare facility must be kept in a locked cabinet, gun safe, or other container that is inaccessible to children, while children are in attendance. Keys to these containers must also be inaccessible to children. ()

a. Ammunition must be stored in a locked container separate from firearms. ()

b. Matches, lighters, and any other means of starting fires must be kept away from and out of the reach of children. ()

c. Other weapons that could cause harm must be stored out of reach of children. ()

05. Animals and Pets. Any pet or animal present at the facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The operator must maintain the animal's vaccinations and vaccination records which will be made available to the Department upon request. ()

06. Storage of Hazardous Materials. Cleaning materials, flammable liquids, detergents, aerosol cans, pesticides, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children. ()

362. -- 364. (RESERVED)

365. BUILDINGS, GROUNDS, FURNISHINGS, AND EQUIPMENT.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with the following: ()

01. Appliances and Electrical Cords. All appliances, lamp cords, exposed light sockets, and electrical outlets will be protected to prevent electrocution. ()

02. Balconies and Stairways. Balconies and stairways accessible to children will have substantial railings as required by IDAPA 24.39.30, "Rules of Building Safety (Building Code Rules). ()

03. Stairway Protection. Where an operator cares for children less than three (3) years old, stairways will be protected to prevent child access to stairs. ()

04. Hazardous Area Restrictions. Based on the age and functioning level of children in care and the type of hazard and the area surrounding the hazard will be restricted to prevent easy access to the hazard. ()

05. Fueled Equipment. Fueled equipment including motorcycles, mopeds, lawn-care equipment, and portable cooking equipment will not be stored or repaired in areas where children are present. ()

06. Water Hazards. Above and below ground pools, hot tubs, ponds, and other bodies of water that are on the daycare facility premises must provide the following safeguards: ()

a. The area surrounding the body of water must be fenced and locked in a manner that prevents access by children and meets the following: ()

i. The fence will be at least four (4) feet high with no vertical opening more than four (4) inches wide and designed so that a young child cannot climb or squeeze under or through the fence. The fence will surround all sides of the pool and have a self-closing gate that has a self-latching mechanism in proper working order that is out of the reach of young children. ()

ii. If the house forms one (1) side of the barrier for the pool, all doors that provide unrestricted access to the pool will have alarms that produce an audible sound when the door is opened. ()

b. Furniture or other large objects will not be left near the fence in a manner that would enable a child to climb on the furniture or other large object and gain access to the pool. If the area surrounding a pool, hot tub, pond, or other body of water is not fenced and locked, there will be a secured protective covering that prevents access by a child. ()

c. Wading pools and buckets will be empty when not in use. ()

d. Children will be under direct supervision of an adult staff member who is certified in pediatric rescue breathing, infant-child CPR, and first aid while using a bathtub, pool, hot tub, pond, or other body of water. ()

e. A minimum of a four (4) foot high fence that prevents access from the daycare facility premises, if the daycare premises are adjacent to a body of water. ()

07. Indoor Play Areas and Toys. The indoor play areas will be clean, have age-appropriate toys, and be free from accumulation of dirt, rubbish, or other health hazards. ()

08. Outdoor Play Areas and Toys. Any outdoor play area must be maintained free from hazards such as wells, machinery, and animal waste. ()

a. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area will be enclosed with a fence in good repair that is at least four (4) feet high without any holes or spaces greater than four (4) inches in diameter. ()

b. Outdoor equipment, such as climbing apparatus, slides, and swings will be anchored firmly and placed in a safe location and according to the manufacturer's instructions. ()

c. Outdoor play areas will be designed so that all parts always visible and are easily supervised by a staff member. ()

d. Toys, play equipment, and any other equipment used by the children will be of substantial construction and free from rough edges and sharp corners. Unguarded ladders on slides will be kept in good repair and well-maintained. ()

e. Toys and objects with a diameter of less than one (1) inch (two point five (2.5) centimeters), objects with removable parts that have a diameter of less than one (1) inch (two point five (2.5) centimeters), plastic bags, styrofoam objects, and balloons will not be accessible to children ages three (3) and under or children who are known to place such objects in their mouths. ()

366. -- 389. (RESERVED)

390. CONTINUED COMPLIANCE, REPORTING CHANGES, AND CRITICAL INCIDENTS.

Each daycare owner or operator must always remain in compliance with fire, safety, and health requirements under these rules. ()

01. Posting of License and Other Information. ()

a. A daycare license issued by the Department to operators must be posted in plain view where it can be seen by parents and the public upon entering the facility. ()

b. A daycare must post the Department's contact information and the statewide number to file daycare complaints. ()

02. Reporting Changes. The Department must be notified of any changes that would affect the terms of licensure or could affect the health, well-being, or safety of children. ()

03. Critical Incidents. A daycare operator must report any of the following to the Department within twenty-four (24) hours: ()

a. Serious injury or death of a child at the facility; ()

b. Any arrests, citations, withheld judgments, or criminal convictions of disqualifying crimes under Section 39-1113, Idaho Code, of an operator or any individual regularly on the premises of the facility and provide documentation that the individual is not working with children or is not on the premises. ()

391. -- 394. (RESERVED)

395. FAILURE TO COMPLY.

01. Misdemeanors to Operate Without a License. It is a misdemeanor to operate a daycare center or group daycare facility without first obtaining a daycare license from the Department or to operate a daycare center or group daycare facility without posting the license in a place easily seen by a parent or the general public. ()

a. The Department may grant a grace period of no more than sixty (60) days to allow the daycare facility to comply with these rules and with Title 39, Chapter 11, Idaho Code. ()

b. The operator or owner must agree to begin the application process under Section 321 of these rules within one (1) business day of identification by the Department that a daycare owner or operator is noncompliant with Title 39, Chapter 11, Idaho Code, or this chapter of rules. ()

02. Misdemeanor to Operate Without Obtaining a Background Check. It is a misdemeanor to operate a family daycare home caring for four (4) or more children without obtaining the required background check under Section 39-1105, Idaho Code. If there is an initial citation for violation of Section 39-1115, and a person makes the applications required within twenty (20) days, the complaint will be dismissed. Operating a family daycare home for four (4) or more children after failure to pass the required background check is a misdemeanor. ()

03. Misdemeanor to Provide Daycare if Guilty of Certain Offenses. It is a misdemeanor to provide daycare services if found guilty of any offenses under Section 39-1113, Idaho Code. ()

396. -- 399. (RESERVED)

STANDARDS FOR FOSTER HOMES
(Sections 400-499)

400. STANDARDS FOR FOSTER HOMES.

The standards for licensing foster homes are to insure that children of the state who must live away from their parents receive adequate substitute parental care to address their need for safety, health, and well-being, that the persons providing this care are capable and suitable to meet the protection needs of children living in foster homes, and the physical environment in which these children reside is a safe setting. ()

401. LICENSING PROVISIONS RELATED TO THE INDIAN CHILD WELFARE ACT.

These rules do not supercede the licensing authority of Indian tribes under the Indian Child Welfare Act, P.L. 95-608, 25 USC, Sections 1901 – 1963. ()

402. FOSTER PARENT QUALIFICATIONS AND SUITABILITY.

Foster parents must be physically and emotionally suited to care for children and to deal with the problems presented by children placed away from their own parents, family and homes. An applicant for licensure as a foster parent must meet the following: ()

01. Minimum Age. Be twenty-one (21) years old or older. ()

02. Character. Be of good character. ()

03. Communication. Be able to communicate with the child, the licensing agency, and health care and other service providers. ()

04. Personal Attributes and Experiences. Have the maturity, interpersonal qualities, temperament and life experiences that prepare the foster parent to provide foster care. ()

05. Availability for Child Placement. Express a willingness to provide care for the kind of children the children's agency has available for placement. ()

06. Knowledge and Skill. Demonstrate an understanding of the care that must be provided to the children served by the children's agency or express a willingness to learn how to provide that care. ()

- 07. Child Care and Supervision.** Have adequate time to provide care and supervision for children. ()
- 08. Income and Resources.** Have a defined and sufficient source of income and be capable of managing that income to meet the needs of the foster family without relying on the payment made for the care of a foster child. ()
- 09. Health.** Have the physical, intellectual, and emotional health to assure appropriate care of children. ()
- 10. Harmonious Home Life.** Establish and maintain a harmonious home life to give children the emotional stability they need. No marital or personal problems may exist within the family that would result in undue emotional strain in the home or be harmful to the interest of children placed in the home. ()
- 11. Literacy.** At least one (1) adult caretaker in the home must have functional literacy. ()
- 12. Acceptance of Foster Children.** Demonstrate a willingness and ability to accept a child into the home as a member of the family. ()
- 13. Family Supports.** Demonstrate a willingness, and ability, to work with a foster child's legal family, future family, relatives, or Indian tribe. ()
- 14. Compliance with Licensing Rules.** Demonstrate a willingness and ability to comply with the licensing rules for foster homes. ()
- 15. Illegal Substance.** Foster Parents will not use any illegal substances, abuse alcohol by consuming it in excessive amounts, or abuse legal prescription or nonprescription drugs, or both, by consuming them in excessive amounts or using them contrary to medication instructions. ()
- 16. Nicotine Use.** Foster Parents and their guests will not smoke or vape in the foster family home, in any vehicle used to transport the child, or in the presence of the child in foster care. ()
- 403. CRIMINAL HISTORY AND BACKGROUND CHECKS FOR FOSTER CARE LICENSE.**
All applicants for a foster care license and other adult members of the household must comply with IDAPA 16.05.06, "Criminal History and Background Checks," and the following: ()
- 01. Required Procedures.** Each applicant for a foster home license, and any other adult household member, must participate in a background check. ()
- 02. Change in Household Membership.** By the next working day after another adult begins residing in a licensed foster home, a foster parent must notify the children's agency of the change in household membership and assure that the new adult household member will complete a background check within fifteen (15) days of residence in the foster home. ()
- 03. Foster Parent's Child Turns Eighteen.** A foster parent's child who turns eighteen (18) and lives continuously in the home is not required to have a background check except as specified in Subsection 404.03.c. of this rule. ()
- a.** After turning eighteen (18) years old, if the foster parent's adult child no longer lives in the foster parent's home and subsequently resumes living in the licensed foster home, they will be considered an adult household member and must complete a background check within fifteen (15) days from the date they became an adult household member. ()
- b.** If the adult child leaves the foster home for the purpose of higher education or military service, and periodically returns to the home for less than ninety (90) days, they are not considered to be an adult household member and are not required to complete a background check. While in the home, they cannot have any unsupervised direct care responsibilities for any foster children in the home. Should they remain in the foster home for more than

ninety (90) days, they will immediately be considered an adult household member and must complete a background check within fifteen (15) days from the date they became an adult household member. ()

c. If the adult child continues to live in their parent's licensed foster home or on the same property, they must complete a background check within fifteen (15) days of turning twenty-one (21). This requirement is not necessary if the adult child has completed a background check between the ages of eighteen (18) and twenty-one (21). ()

04. Background Check at Any Time. The Department retains the authority to require a background check at any time on individuals who are residing in a licensed foster home or on the foster parent's property. ()

404. INITIAL AND ONGOING EVALUATION.

An applicant must participate in the process and tasks to complete an initial evaluation for foster care licensure. ()

01. Applicant Participation. The applicant must do all the following: ()

a. Cooperate with and allow the children's agency to determine compliance with these rules to conduct an initial foster home study; ()

b. Inform the children's agency if the applicant is currently licensed or has been previously licensed as a foster parent or the applicant has been involved in the care and supervision of children or adults; ()

c. Provide a medical statement for each applicant, signed by a medical professional, within the twelve (12) month period prior to initial licensure for family foster care, indicating the applicant is in such physical and mental health so as to not adversely affect either the health or quality of care for children placed in the home; ()

d. Provide the name of, and a signed release to obtain the following information about, each household member: ()

i. Admission to or release from a facility, hospital, or institution for the treatment of an emotional, intellectual, or substance abuse issue; ()

ii. Outpatient counseling, treatment, or therapy for an emotional, intellectual, or substance abuse issue; and ()

e. Provide three (3) satisfactory references, one (1) of which may be from a person related to the applicant(s). An applicant will provide additional references upon the request of the children's agency. ()

02. Physical and Mental Health of Household Members. All household members must be in such physical and mental health that the health, safety, or well-being of a foster child will not be adversely affected. A health status report of household member may be required from a medical professional if this appears advisable to the children's agency. To assure the safety and well-being of children, each household member must comply with these rules. ()

03. Disclosure of Information. An applicant must provide the children's agency with the following or any additional information the children's agency deems necessary to complete the initial family home study: ()

a. The names, including maiden or other names used, and ages of the applicant(s); ()

b. Social Security Number; ()

c. Education; ()

d. Verification of marriages and divorces; ()

e. Religious and cultural practices of the applicant including their willingness and ability to ()

- accommodate or provide care to a foster child of a different race, religion, or culture; ()
- f. A statement of income and financial resources and the family's management of these resources; ()
 - g. Marital relationship, if applicable, including decision making, communication, and roles within the family; ()
 - h. Individual and family functioning and interrelationships with each household member; ()
 - i. Any current family problems, including medical or mental illness, illegal drug use, prescription drug abuse, and excessive alcohol use; ()
 - j. Previous criminal convictions and valid incidents of child abuse and neglect; ()
 - k. Family history, including how the applicant was disciplined, childhood experiences, and problem solving; ()
 - l. Child care and parenting skills; ()
 - m. Methods of discipline; ()
 - n. The names, ages, and addresses of all biological and adopted children currently residing in or outside the home; ()
 - o. Adjustment and special needs of the applicant's children; ()
 - p. Interests and hobbies; ()
 - q. Reasons for applying to be a foster parent; ()
 - r. Understanding of the purpose and goals of foster care; ()
 - s. Prior and current experiences with foster care; ()
 - t. Emotional stability and maturity in dealing with the needs, challenges, and related issues associated with the child's placement into applicant(s) home; ()
 - u. The attitudes toward foster care by immediate and extended members of the family and other persons who reside in the home; ()
 - v. The applicant's attitudes about a foster child's family and the applicant's willingness to work with the child's family and tribe; ()
 - w. Specifications of the children preferred by the family that include the number of children, age, gender, race, ethnic background, social, emotional, and educational characteristics of children preferred; ()
 - x. Adequacy of the applicant's house, property, and neighborhood for the purpose of providing foster care as determined by onsite observations; ()
 - y. The applicant(s) willingness to abide by the children's agency policies and procedures for discipline; ()
 - z. Three (3) personal references, at least two (2) that are from persons not related to the applicants, reflecting the applicants to be of good character and possess good habits; ()
 - aa. Training needs of the applicant(s); and ()

- bb.** The capacity and willingness to transport a foster child in a motor vehicle. ()

405. SUBSEQUENT EVALUATIONS.

A foster parent must comply with the following for the subsequent evaluation required for a foster care license: ()

01. Reasonable Access. A foster parent will allow the children's agency reasonable access to the foster home, including interviewing each foster parent, each foster child, and any household member to determine continued compliance with licensing standards, for child supervision purposes, and to conduct a recertification study. ()

02. Update Information. Provide all changes to the information contained in the initial evaluation and subsequent evaluations. ()

03. Family Functioning. Provide information on any changes in family functioning and inter-relationships. ()

04. Other Circumstances. Provide the children's agency with any information regarding circumstances within the family that may adversely impact the foster child. ()

05. Written Plan of Correction. Cooperate with the children's agency in developing and carrying out a written plan required to correct any rule noncompliance identified by any evaluation conducted by the children's agency. ()

406. FOSTER PARENT DUTIES.

A foster parent must do the following: ()

01. Case Plan Implementation. Cooperate with, and assist the children's agency in the implementation of the case plan for children and their families. ()

02. Reporting Progress and Problems. Promptly and fully disclose to the children's agency information concerning a child's progress and problems. ()

03. Termination of Placement by the Foster Family. Provide notification to the children's agency of the need for a child to be moved from the foster home not less than fourteen (14) calendar days before the move, except when a delay would jeopardize the child's care or safety, or the safety of members of the foster family. ()

04. Written Policies and Procedures for Foster Families. Maintain a copy of, be familiar with, and follow these rules and any other rules, policies, or procedures which an agency may require for foster parents and foster care. ()

407. FOSTER PARENT TRAINING.

Each foster parent must comply with the following: ()

01. Orientation. Each applicant for a foster home license will receive an orientation related to the foster care program and services. ()

02. Pre-Service. Complete not less than twenty-four (24) hours of identified training prior to the issuance of an initial foster care license. ()

03. First Year. Prior to first annual licensing renewal, complete not less than fifteen (15) hours of identified training. ()

04. Annual Training. Complete not less than ten (10) hours of training annually following the first year of licensing. ()

05. Individualized Training. Complete training identified by the Department as meeting the individual needs of the foster parent(s). ()

06. Additional Training. Complete any additional training as required by the children's agency foster parent training plan. ()

408. -- 429. (RESERVED)

430. HOME ENVIRONMENT SAFETY REQUIREMENTS.

The property, structure, premises, and furnishings of a foster home must be constructed and maintained in good repair, in a clean condition, with proper trash and recycling disposal, and free from rodents or insect infestation, safety hazards, and dangerous machinery and equipment. Areas and equipment that present a hazard to children must not be accessible by children. ()

01. Living Space. The living space or structure of a foster home will be a house, mobile home (as defined under Title 39, Chapter 41, Idaho Code), housing unit, or apartment occupied by an individual or family. ()

02. Swimming Pools, Hot Tubs, Ponds, and Other Bodies of Water for Use by Children. Any licensed foster home with these water hazards on or adjacent to their property must provide the following safeguards: ()

a. Around any of the water hazards listed in Subsection 430.02 of this rule, a foster child must have appropriate adult supervision consistent with the child's age, physical ability, and developmental level; ()

b. The area surrounding a body of water must be fenced and locked in a manner that prevents access by children under the age of twelve (12), children of any age who are not competent swimmers, or children who are developmentally younger than their chronological age of twelve (12); or ()

c. Above ground pools must have a four-foot barrier that may be the pool structure or attached fencing, or both with a maximum vertical clearance between the top of the pool and the bottom of the barrier not exceeding four (4) inches; and ()

i. The ladder must be removed and stored inaccessible to children under the age of twelve (12) when not in use; and ()

ii. If the ladder cannot be removed, the steps or ladder must be surrounded by a barrier as required in Subsection 430.01.b of this rule. ()

d. If the area surrounding any of the water hazards listed in Subsection 430.02 of this rule, is not fenced and locked, there must be a secured protective covering that will not allow access by a child. ()

i. Pool or hot tub covers must be completely removed when in use; ()

ii. When the pool or hot tub cover is in place, the cover must be free from standing water; ()

iii. Covers must always be locked when the pool or hot tub is not in use. ()

03. Access by Children Five Years Old and Under. Any licensed foster home that cares for children five (5) years old and under and chooses to prevent access to a body of water by fencing must provide a fence that meets the following: ()

a. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide, be designed so that a young child cannot climb or squeeze under or through the fence, and surround all sides of the pool or pond; ()

b. The gate must be self-closing and have a self-latching mechanism in proper working order out of

the reach of young children; ()

c. If the house forms one (1) side of the barrier for the pool, doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the doors are opened; and ()

d. Furniture or other large objects must not be left near the fence that would enable a child to climb on the furniture and gain access to the pool; or ()

e. Above ground pools meet the requirements in Subsection 430.01.c in this rule. ()

04. Irrigation Canals or Similar Body of Water. A licensed foster home caring for a child five (5) years old and under or a child who is physically or developmentally vulnerable, whose property adjoins an irrigation canal or similar body of water, must have fencing that prevents access to the canal or similar body of water by the child. ()

05. Other Water Safety Precautions. ()

a. Wading pools must be empty when not being used; ()

b. Children must be under direct supervision of an adult while using a wading pool; ()

c. Toys that attract young children to the pool area must be kept picked up and away from the pool area when not in use; ()

d. A child who does not know how to swim must use an approved lifesaving personal flotation device; ()

e. All swimming pools will be equipped with a life-saving device, such as a ring buoy; and ()

f. Swimming pools that cannot be emptied after each use will have a working pump and filtration system. ()

431. INSTALLATION, MAINTENANCE, AND INSPECTION OF FLAME AND HEAT-PRODUCING EQUIPMENT.

A foster parent must assure: ()

01. Installation and Maintenance of Flame and Heat-Producing Equipment. That a furnace, fireplace, wood-burning stove, water heater, and other flame or heat-producing equipment is installed and maintained as recommended by the manufacturer, and fireplaces are protected by screens or other means. ()

02. Portable Heating Devices. That portable heating devices will not be used during sleeping hours. ()

03. Fire Inspections. An inspection by a certified fire inspector may be required at the discretion of the children's agency. ()

04. Water Heater. The water temperature will not exceed 120 degrees Fahrenheit (49 degrees Celsius). ()

432. FIRE SAFETY, EMERGENCY PLANNING, AND EVACUATION PLAN.
Each foster home must meet the following standards: ()

01. Smoke Detectors. There will be at least one (1) single-station smoke detector (approved by a nationally recognized testing laboratory) that is installed and maintained as recommended by the manufacturer, and as follows: ()

a. One (1) smoke detector on each floor of the home, including the basement; ()

- b. One (1) smoke detector in each bedroom used by a foster child; and ()
- c. One (1) smoke detector in areas of the home that contain flame or heat-producing equipment other than domestic stoves and clothes dryers. ()

02. Carbon Monoxide Detectors. There will be at least one (1) carbon monoxide detector (approved by a nationally recognized testing laboratory) that is installed and maintained as recommended by the manufacturer. Living space that does not have equipment which produces carbon monoxide or does not have an attached garage is exempt from this requirement. Multi-level homes will have one (1) carbon monoxide detector on each level of the home and at least one (1) near all sleeping areas. ()

- 03. Additional Fire Safety Requirements.** To be within the structure of the home: ()
- a. Have at least one (1) operable fire extinguisher that is readily accessible; ()
 - b. Be free of obvious fire hazards such as defective heating equipment or improperly stored flammable materials; ()
 - c. Have a written emergency evacuation plan posted in a prominent place in the home and reviewed with children placed for foster care; ()
 - d. Maintain a comprehensive list of emergency telephone numbers including poison control and posted in a prominent place in the home; and ()
 - e. Maintain first aid supplies. ()

433. EXITS.

There must be at least two (2) exits from each floor level used by a family member that are remote from each other, one (1) of which provides a direct, safe means of unobstructed travel to the outside at street or ground level. A window may be used as a second exit if it complies with these rules. ()

434. DANGEROUS AND HAZARDOUS MATERIALS.

Dangerous and hazardous materials, objects, or equipment, including poisonous, explosive, or flammable substances that could present a risk to a child placed in a foster home must be stored securely and out of reach of a child, as appropriate for the age and functioning level of the child. ()

435. FIREARMS AND AMMUNITION.

Firearms at a foster home must be stored: ()

- 01. Trigger Locks.** Unloaded and equipped with a trigger lock; ()
- 02. Unassembled and Inoperable.** Unloaded, fully inoperable, and incapable of being assembled and fired; ()
- 03. Locked Cabinet or Container.** Unloaded and locked in a cabinet or storage container that is inaccessible to children; or ()
- 04. Gun Safe.** Locked in a gun safe that is inaccessible to children; ()
- 05. Ammunition.** Stored and locked separately from all guns in the home. ()

436. PETS AND DOMESTIC ANIMALS.

Any pet or domestic animal that is suspected or known to be dangerous must be kept in an area inaccessible to children. Dogs must be vaccinated for rabies. ()

437. ADEQUATE HEAT, LIGHT, AND VENTILATION.

A foster home must have adequate heat, light, and ventilation and windows and doors will be screened if used for ventilation. ()

438. BATHROOMS, KITCHENS, WATER SUPPLY, AND SEWAGE DISPOSAL.

A foster home must meet the following: ()

01. Toilet Facilities. A foster home will have a minimum of one (1) flush toilet, one (1) washbasin that has warm and cold running water, and one (1) bathtub or shower that has warm and cold running water, all of which are in good working order. ()

02. Water Supply. The water supply will meet one (1) of the following requirements: ()

a. That it is from a source approved for a private home by the health authority under IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," at the time of application and for annual renewal of such licenses; or ()

b. Water used for consumption at a foster home is from an acceptable source, bottled water from an acceptable source, or boiled for a period specified by the local health authority under IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." ()

03. Sewage Disposal. Sewage will be disposed of through a public system, or in the absence of a public system, in a manner approved by the local health authority, under IDAPA 58.01.03 "Individual/Subsurface Sewage Disposal Rules." ()

04. Kitchen. A foster home will include a properly operating kitchen with a sink, refrigerator, stove, and oven. ()

439. TRANSPORTATION.

A foster parent must comply with the following: ()

01. Legal Requirements for Transporting Children. A foster parent, or any person acting on behalf of a foster parent, that transports a child, will possess a valid driver's license, be insured under Idaho Law, and abide by all traffic laws including the requirement that all children are in proper safety restraints while being transported as required under Section 49-672, Idaho Code, and Section 49-673, Idaho Code. ()

02. Reliable Transportation. A foster parent will arrange for safe, reliable transportation of any foster child in their care to assure the child has access to school, community services, and the children's agency. ()

a. Privately owned vehicles used to transport children in foster care will be properly maintained and be owned by the foster family or friends. ()

b. Public Transportation includes all reliable public transportation. ()

03. Prohibitions of Foster Child Transportation. A foster parent will not transport a foster child while impaired by any substance including alcohol, prescription medication, or any illegal substances. ()

440. CELL PHONE OR TELEPHONE.

Unless previously approved by the licensing agency, there must be an operating cell phone or telephone in a foster home. ()

441. WHEELCHAIR ACCESS.

A foster home that provides care to a child who regularly requires the use of a wheelchair must be wheelchair accessible. ()

442. CHILD PLACEMENT REQUIREMENTS.

A foster family must accept the placement of children into the home within the terms of the foster home license or certification and the children's agency placement agreement. The following provisions will be considered for

determining placement: ()

01. Determining Factors. The number and the age group of children placed in a foster home will be determined by the following: ()

a. The accommodations and the space in the home; ()

b. The interest of the foster family; and ()

c. The experience or skill of the foster family. ()

02. Maximum Number of Children. Except as specified, the maximum number of children in care at any time, including the foster family's own children, or daycare children, will be limited to not more than six (6) children. ()

03. Children Under Two Years Old. Except as specified in Subsection 442.04 of this rule, the maximum number of children under two (2) years old, including those of the foster family, will be limited to two (2) children or less. ()

04. Special Circumstances Regarding Maximum Numbers of Children. The maximum number of children in care at any time may be based on the children's agency assessment and at a minimum one (1) of the following: ()

a. To allow siblings to remain together; ()

b. To allow a child who has an established, meaningful relationship with the family to remain with the family; ()

c. To allow a family with special training or skills to provide care for a child who has a severe disability; or ()

d. To allow a parenting youth in foster care to remain with the child of the parenting youth. ()

05. Continued Care. A foster child who reaches the age of eighteen (18) may continue in foster care placement until the age of twenty-one (21) if the safety, health, and well-being of other foster children residing in the home is not jeopardized. ()

443. INTERAGENCY PLACEMENT OF CHILDREN.

A foster family must only accept for placement children referred from the children's agency that licenses or certifies the foster home. A foster family may accept for placement a foster child from another children's agency only if that children's agency and the foster family have received prior approval for the placement of a child from the children's agency that licensed or certified the home. ()

444. SUBSTITUTE CARE PLACEMENT AND CHILDREN'S AGENCY NOTIFICATION.

A foster parent must: ()

01. Substitute Care. Place a child in substitute care only with the prior knowledge and consent of the children's agency; and ()

02. Notification to Agency. Notify the children's agency before the beginning of any planned absence that requires substitute care of a child for a period of twenty-four (24) hours or more. ()

445. BEDROOMS.

A foster parent must comply with the following: ()

01. Sleeping Arrangements. A bedroom occupied by a foster child will: ()

- a. Provide an adequate opportunity for both rest and privacy for each child; ()
 - child; b. Be readily accessible to adult supervision as appropriate for the age and functioning level of each ()
 - c. Have sufficient floor space to provide two (2) feet of space between beds; ()
 - d. Have sufficient space for the storage of clothing and personal belongings; ()
 - e. Have a finished ceiling, permanently affixed floor-to-ceiling walls, and finished flooring; ()
 - f. Have a latchable door that leads to an exit from the foster home; ()
 - g. Have at least one (1) outside window that complies with the following: ()
 - i. Is readily accessible to children and the foster parent; ()
 - ii. Is readily opened from the inside of the room; and ()
 - iii. Is of sufficient size and design to allow for the evacuation of children and caregivers. ()
 - h. Is free of the following: ()
 - i. Household heating equipment excluding baseboard heating systems; ()
 - ii. Water heater; and ()
 - iii. Clothes washer and dryer. ()
- 02. Non-Ambulatory Child.** A child who is non-ambulatory and cannot readily be carried by one (1) household member will sleep in a bedroom located at ground level. ()
- 03. Sharing Bedroom with a Non-Parent Adult.** A child will not share a bedroom with a non-parent adult unless the child and adult are of the same gender and there is not more than four (4) years difference in age between the adult and the youngest child in the bedroom. ()
- 04. Sharing a Bedroom with a Foster Parent.** A child three (3) years old or older will not routinely share the bedroom with a foster parent unless the child has special health or emotional needs that require the attention of the foster parent(s) during sleeping hours. ()
- 05. Maximum Number of Children in a Bedroom.** No more than four (4) children will occupy a bedroom. The placement of more than one (1) child in a bedroom will be based on the age, behavior, functioning, individual needs of each child, and sufficient available space. ()
- 06. Children of the Opposite Gender.** Children of the opposite gender, any of whom are more than five (5) years old, will not share the same bedroom. ()
- 07. Number of Children in a Bed.** Each child will have an individual bed, except that two (2) brothers or two (2) sisters of comparable age may share a bed if they have previously shared a bed or when there are no health, behavioral, or other factors indicating this is undesirable. ()
- 08. Restrictions on Sleeping Arrangements.** The following must not be used for sleeping purposes: ()
- a. A room or area of the foster home that is primarily used for purposes other than sleeping; ()
 - b. A room or space, including an attic, that is accessible only by a ladder, folding stairway, or through

a trapdoor; or ()

c. A detached building, except in the case of an older child preparing for emancipation when it can be documented that the child's needs can best be met by that arrangement. ()

09. Appropriate Bedding. A child will have a bed that is appropriate for the age and development of the child. Beds will be equipped with a clean and comfortable mattress that complies with the Consumer Product Safety Commission standard (<https://www.cpsc.gov/>), pillow, linens, and blankets appropriate for the weather. ()

10. Infants. Adults and children, or both, will not co-sleep or bed-share with infants. Cribs will comply with Subsection 002.02 of these rules. ()

446. BEHAVIOR MANAGEMENT AND DISCIPLINE.

Methods of behavior management and discipline for children must be positive and consistent. These methods must be based on each child's needs, stage of development, and behavior. Discipline is to promote self-control, self-esteem, and independence. ()

01. Prohibitions. The following types of punishment of a foster child are prohibited: ()

a. Physical force or any kind of punishment inflicted on the body, including spanking; ()

b. Cruel and unusual physical exercise or forcing a child to take an uncomfortable position; ()

c. Use of excessive physical labor with no benefit other than for punishment; ()

d. Mechanical, medical, or chemical restraint; ()

e. Locking a child in a room or area of the home; ()

f. Denying necessary food, clothing, bedding, rest, toilet use, bathing facilities, or entrance to the foster home; ()

g. Mental or emotional cruelty; ()

h. Verbal abuse, ridicule, humiliation, profanity, threats, or other forms of degradation directed at a child or a child's family; ()

i. Threats of removal from the foster home; ()

j. Denial of visits or communication with a child's family unless authorized by a children's agency in its service plan for the child and family; and ()

k. Denial of necessary educational, medical, counseling, or social services. ()

02. Restraint. A foster parent who has received specific training in the use of child restraint may use reasonable restraint methods, approved by the children's agency, to prevent a child from harming themselves, other persons or property, or to allow a child to gain control of themselves. ()

03. Authority. The authority for the discipline of a foster child must not be delegated by a foster parent to other members of the household. ()

04. Agency Consultation. A foster parent must consult with the children's agency prior to using any behavior management or discipline technique that exceeds the scope of these rules. ()

447. MEDICAL AND DENTAL CARE.

01. Health Care Services. A foster parent must follow and carry out the health or dental care plan for a child as directed by a medical professional. ()

02. Child Injury and Illness. Follow the children's agency approved policies for medical care of a child who is injured or ill. ()

03. Dispensing of Medications. Provide prescription medication as directed by a medical professional. A foster parent must not discontinue or in any way change the medication provided to a child unless directed to do so by a medical professional. ()

04. Storage of Medication. A foster parent must store vitamins, prescriptions, and over-the-counter medications in an area that is inaccessible to a child. ()

448. PERSONAL CARE AND HYGIENE.

A foster parent must instruct the child in personal care, hygiene, and grooming and provide the child with necessary personal care, hygiene, and grooming products appropriate to the age, gender, and needs of the child. The foster parents will seek approval from the children's agency before altering a child's physical appearance including haircuts, body piercing, and tattooing. ()

449. FOOD AND NUTRITION.

A foster parent must provide a foster child with meals that are nutritious, well-balanced, of sufficient quantity, and serve the foster child the same meals as other members of the household unless a special diet has been prescribed by a medical professional, or unless otherwise dictated by differing needs based on a child's age, medical condition, or cultural or religious beliefs. A foster child is required to eat with other members of the family unless the child's medical condition dictates a different arrangement. Perishable foods must be refrigerated. Milk provided to foster children must be pasteurized, from a licensed dairy, or come from an animal that is documented to be free from tuberculosis, brucellosis, or other conditions that could be injurious to a child's health. ()

450. NECESSARY CLOTHING.

A foster parent must provide a child with sufficient, clean, properly fitting clothing appropriate for the child's age, gender, individual needs, and season with clothing reflecting cultural and community standards. ()

451. PERSONAL POSSESSIONS, ALLOWANCES, AND MONEY.

A foster parent must follow the children's agency policy regarding a child's personal possessions and when a child moves from a foster home, the foster parent will provide the child or the children's agency with all of the child's possessions. ()

452. CHILD TASKS.

A parent must permit a child to perform only those routine tasks that are within the child's ability, are reasonable, and are similar to the routine tasks expected of other members of the household of similar age and ability. ()

453. EDUCATION.

A foster parent must cooperate with the children's agency and applicable educational organizations to implement the education and training plan for each child. ()

454. RELIGIOUS AND CULTURAL PRACTICES.

A foster parent must provide a child in care with opportunity for spiritual development and cultural practices according to the wishes of the child and the child's parent or tribe. ()

455. RECREATION.

A foster parent must provide or arrange access to a variety of indoor and outdoor recreational activities and encourage a child to participate in recreational activities that are appropriate for the child's age, interests, and ability. ()

456. MAIL.

A foster parent must permit a child to send and receive mail according to the mail policy of the children's agency. ()

457. REASONABLE AND PRUDENT PARENT STANDARD.

A caregiver must follow the reasonable and prudent parent standard. ()

01. Reasonable and Prudent Parent Standard Defined. The reasonable and prudent parent standard means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that a caregiver must use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, or social activities. See “Caregiver” in the definitions. “Age or developmentally appropriate” means the following: ()

a. Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and ()

b. In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child. ()

02. Training. Each caregiver will complete training to include knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities, including knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child, and applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting one (1) or more days, and involving the signing of permission slips and arranging transportation for the child to and from extracurricular enrichment and social activities. ()

458. -- 469. (RESERVED)

470. RECORD MANAGEMENT AND REPORTING REQUIREMENTS.

A foster parent must maintain a record for each child in the home that will include all written material provided to the foster home by the children's agency and additional information gathered by the foster parent that includes the following: ()

01. Personal Data. The child's name, gender, date of birth, religion, race, and tribe, if applicable; ()

02. Any Known History of Abuse and Neglect of the Child. ()

03. Any Known Emotional and Psychological Needs of the Child. ()

04. Any Information Known about the Child’s Health. ()

05. Any Known Behavioral Problems of the Child. ()

471. REPORTING FOSTER HOME CHANGES.

A foster parent must report to the children's agency any significant change in the foster home by the next working day from the time a foster parent becomes aware of a change, including the following: ()

01. Illness, Injury, or Death. Serious illness including physical or mental health, injury, or death of a foster parent or a household member. ()

02. Arrests, Citations, Withheld Judgments, or Criminal Convictions. Any arrests, citations, withheld judgments, or criminal convictions of a foster parent or household member. ()

03. Parole and Probation. Initiation of court-ordered parole or probation of a foster parent or household member. ()

04. Admission or Release From Facilities. Admission to, or release from, a correctional facility, a hospital, or an institution for the treatment of an emotional, mental health, or substance abuse issue of a foster parent or household member. ()

05. Employment. A change of employment status of a foster parent. ()

06. Counseling, Treatment, or Therapy. Counseling or other methods of therapeutic treatment on an outpatient basis for an emotional, mental, or substance abuse issue of a foster parent or household member. ()

07. Change of Residence. A foster parent will inform the children's agency of any planned change in residence and apply for licensure at the new address not less than two (2) weeks prior to a change in residence. ()

08. Household Members. Inform the children's agency of changes in household members including minor children. ()

09. Additional Licensing Application. A foster parent will notify the children's agency within five (5) calendar days after filing an application for a certified family home, daycare, or group daycare license. ()

472. CONFIDENTIALITY.

A foster parent must maintain the confidentiality of any information and records regarding a foster child and the child's parents and relatives. A foster parent will release information about the foster child only to persons authorized by the children's agency responsible for the foster child. Foster parents will follow the Department's policies for the use of social media and posting of pictures of children in foster care. ()

473. CRITICAL INCIDENT NOTIFICATION.

The foster parent must immediately notify the responsible children's agency of any of the following incidents: ()

01. Death. Death or near death of a child in care. ()

02. Suicide. Suicidal ideation, threats, or attempts to commit suicide by the foster child. ()

03. Missing. When a foster child is missing from a foster home. ()

04. Illness. Any illness or injury that requires hospitalization of a foster child. ()

05. Law Enforcement Authorities. A foster child's detainment, arrest, or other involvement with law enforcement authorities. ()

06. Removal of Child. Attempted removal or removal of a foster child from the foster home by any person who is not authorized by the children's agency. ()

474. -- 999. (RESERVED)

IDAPA 24.05 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES
24.05.01 – RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS
DOCKET NO. 24-0501-2200F
NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 67-2604, Idaho Code, and Section 54-2406, Idaho Code.

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

This pending fee rule adopts the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 24, rules of the Division of Occupational and Professional Licenses / Board of Drinking Water and Wastewater Professionals:

IDAPA 24.05

- 24.05.01, *Rules of the Board of Drinking Water and Wastewater Professionals.*

There are no changes to the pending fee rule and it has been adopted as originally proposed. The complete text of the proposed rule is published in the October 5, 2022, Idaho Administrative Bulletin, [Vol. 22-10, pages 704-719](#).

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

The following is a specific description of the fees or charges:

24.05.01, Rules of the Board of Drinking Water and Wastewater Professionals – Fees are established in accordance with Section 54-2407, Idaho Code, as follows:

FEE TYPE	AMOUNT (Not to Exceed)
Application	\$25
Examination	Amount set by examination provider
Endorsement	\$30
Original License	\$30
Annual renewal	\$30
Reinstatement	As provided in Section 67-2614, Idaho Code

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Tim Frost at (208) 577-2491 or tim.frost@dopl.idaho.gov.

DATED this December 7, 2022.

Tim Frost, Deputy Administrator
Division of Occupational & Professional Licenses
Phone: (208) 577-2491
11341 W. Chinden Boulevard, Building #4
Boise, ID 83714
P.O. Box 83720
Boise, ID 83720-0063
tim.frost@dopl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2604 and Section 54-2406, Idaho Code.

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

Tuesday, October 25, 2022 – 2:00 p.m. (MT)

**Division of Occupational and Professional Licenses
Chinden Campus Building 4 – Eagle Rock Room
11341 W. Chinden Blvd., Bldg. #4
Boise, ID 83714**

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 proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 24, rules of the Division of Occupational and Professional Licenses / Board of Drinking Water and Wastewater Professionals:

IDAPA 24.05

- 24.05.01, *Rules of the Board of Drinking Water and Wastewater Professionals*. (Rule 300.04 amended to expand opportunity to attend an apprenticeship in lieu of post high school education and removed outdated rule referenced in Rule 400).

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

The following is a specific description of the fees or charges:

24.05.01, Rules of the Board of Drinking Water and Wastewater Professionals – Fees are established in accordance with Section 54-2407, Idaho Code, as follows:

FEE TYPE	AMOUNT (Not to Exceed)
Application	\$25
Examination	Amount set by examination provider
Endorsement	\$30
Original License	\$30
Annual renewal	\$30
Reinstatement	As provided in Section 67-2614, Idaho Code

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

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule(s), contact Tim Frost at (208) 577-2491 or tim.frost@dopl.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 5, 2022.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING FEE DOCKET NO. 24-0501-2200F

24.05.01 – RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to Section 54-2406, Idaho Code. ()

001. SCOPE.

These rules govern the practice of drinking water operators, wastewater operators, and backflow assembly testers. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Class I Restricted License. Class I restricted license means a water or wastewater license associated with a specific class I system. A restricted license is available for water distribution or treatment or for wastewater collection or treatment. A restricted license is not transferable and does not qualify for endorsement. ()

02. DEQ. The Idaho Department of Environmental Quality. ()

03. Direct Supervision. Supervision in a way that will ensure the proper operation and maintenance of the public drinking water or public wastewater system. Supervision shall include, but not be limited to, providing written, hands-on, or oral instruction as well as verification that the instructions are being completed. The supervisor has an active on-site or on-call presence at the specific facility. ()

04. Endorsement. Endorsement (often referred to as “reciprocity”) is that process by which a person licensed in another jurisdiction may apply for a license in Idaho. ()

05. EPA. The United States Environmental Protection Agency. ()

06. Experience. One (1) year of experience is based upon a minimum of one thousand six hundred hours (1,600) worked. ()

07. On-Site Operating Experience. On-site operating experience means experience obtained while physically present at the location of the system. ()

08. Operating Personnel. Operating personnel means any person who is employed, retained, or appointed to conduct the tasks associated with the day-to-day operation and maintenance of a public drinking water system or a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. ()

09. Person. A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. ()

10. Responsible Charge Operator. An operator of a public drinking water system or wastewater system, designated by the system owner, who holds a valid license at a class equal to or greater than the drinking water system or wastewater classification, who is in responsible charge of the public drinking water system or the wastewater system. ()

11. Substitute or Back-Up Responsible Charge Operator. An operator of a public drinking water or wastewater system who holds a valid license at a class equal to or greater than the drinking water or wastewater system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. ()

12. Very Small Public Drinking Water System. A community or non-transient non-community public water system that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). ()

13. Very Small Wastewater System. A public wastewater system that serves five hundred (500) connections or less and includes a collection system with a system size of six (6) points or less on the Department of Environmental Quality (DEQ) system classification rating form and is limited to only one (1) of the following wastewater treatment processes: ()

- a. Aerated lagoons: ()
- b. Non-aerated lagoon(s); ()
- c. Primary treatment; or ()
- d. Primary treatment discharging to a large soil absorption system (LSAS). ()

011. -- 149. (RESERVED)

150. APPLICATION.

Each applicant for licensure must submit a complete application together with the required fees. The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. The Board will not review an application until all required information is furnished and the required fees paid. ()

01. Licensure by Examination. An application is made on the uniform application form adopted by the Board and furnished to the applicant by the Division. All applications will include: ()

- a. Documentation of having met the appropriate educational requirement; ()
- b. Documentation of all actual applicable experience giving kind and type of work done, together with dates of employment, and verification by affidavit of the most current applicable experience, signed by the person under whose supervision the work was performed. ()

02. Licensure by Endorsement. An application is made on the uniform application form adopted by the Board and furnished to the applicant by the Division. All applications must include: ()

- a. Official documentation of licensure sent to the Division directly from each regulatory authority from which the applicant has obtained licensure. Documentation will include name, address, current status, date originally issued, expiration date, and any disciplinary action imposed; ()
- b. A copy of the current regulations governing licensure in each jurisdiction from which the applicant obtained licensure. ()

03. Application Required. Applicants seeking licensure in any type or classification of licensure must submit a separate application for each type and classification of licensure being sought. Applicants holding a current type and classification of license and who are seeking a classification upgrade within the same license type and category are not required to submit an original license fee with their application. ()

151. -- 174. (RESERVED)

175. LICENSE TYPES AND CLASSIFICATIONS.

The Board issues the following licenses under the provisions of Chapter 24, Title 54, Idaho Code. ()

- 01. Drinking Water Distribution Operator.** ()

- a. Class Operator-In-Training, Class I Restricted, Class I, Class II, Class III, or Class IV. ()
- 02. Drinking Water Treatment Operator.** ()
- a. Class Operator-In-Training, Class I Restricted, Class I, Class II, Class III, or Class IV. ()
- 03. Wastewater Treatment Operator.** ()
- a. Class Operator-In-Training, Lagoon, Class I Restricted, Class I, Class II, Class III, Class IV, or Land Application. ()
- 04. Wastewater Collection Operator.** ()
- a. Class Operator-In-Training, Class I Restricted, Class I, Class II, Class III, or Class IV. ()
- 05. Wastewater Laboratory Analyst.** ()
- a. Class I, Class II, Class III, or Class IV. ()
- 06. Backflow Assembly Tester.** ()
- 07. Drinking Water Very Small System Operator.** ()
- 08. Wastewater Very Small System Operator.** ()

176. -- 199. (RESERVED)

200. FEES FOR EXAMINATION AND LICENSURE.

Application and examination fees are non-refundable.

FEE TYPE	AMOUNT (Not to Exceed)
Application	\$25
Examination	Amount set by examination provider
Endorsement	\$30
Original License	\$30
Annual renewal	\$30
Reinstatement	As provided in Section 67-2614, Idaho Code

()

201. -- 249. (RESERVED)

250. LICENSE REQUIRED -- SCOPE OF PRACTICE.

All water and wastewater operating personnel, including those in responsible charge and those in substitute responsible charge, of public water systems and public wastewater systems, and all backflow assembly testers, shall be licensed under the provisions of these rules and Chapter 24, Title 54, Idaho Code. ()

01. Drinking Water Operator Scope. Operating personnel shall only act in accordance with the nature and extent of their license. Those in responsible charge or substitute responsible charge of a public water system must hold a valid license equal to or greater than the classification of the public water system where the responsible charge or substitute responsible charge operator is in responsible charge. The types of water systems are

distribution and treatment. ()

02. Wastewater Operator Scope. Operating personnel may only act in accordance with the nature and extent of their license. Those in responsible charge or substitute responsible charge of a public wastewater system must hold a valid license equal to or greater than the classification of the public wastewater system where the responsible charge or substitute responsible charge operator is in responsible charge. The types of wastewater systems are collection, laboratory analyst, and treatment. ()

03. Backflow Assembly Tester. Individuals licensed as backflow assembly testers may inspect and test backflow prevention assemblies as defined in Title 54, Chapter 24, Idaho Code. ()

04. Operator-in-Training. Operators-in-training may practice only under the direct supervision of a licensed operator of a type, category, and classification higher than operator-in-training. No operator-in-training can accept or perform the designated responsible charge duties at any system. ()

251. -- 299. (RESERVED)

300. GENERAL REQUIREMENTS FOR LICENSE.

Applicants must submit an application together with the required fees and required documentation. ()

01. Examination Requirement. Applicants must pass a written examination for each individual classification in each type of licensure with a minimum score of seventy percent (70%). ()

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. ()

b. The examination for all types and classes of licensure will be validated and provided by the Association of Boards of Certification (ABC). The American Backflow Prevention Association (ABPA) backflow assembly tester examination is also approved for backflow assembly tester licensure. ()

c. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. ()

d. Applicants must take and pass the examination within one (1) year of application approval. After one (1) year a new application and applicable fees must be submitted. ()

02. Education Requirements. Documentation must be provided showing proof of education required for the type and level of license being sought. ()

03. Experience Requirement. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable except as may be allowed by substitution as set forth in these rules. Experience as a laboratory analyst can be counted as wastewater operating experience for up to one-half (1/2) of the wastewater operating experience requirement but cannot be counted as responsible charge experience. Experience as a wastewater operator can be counted as laboratory analyst experience for up to one-half (1/2) of the laboratory analyst experience. Applicants may not receive more than one (1) year of experience for hours worked in excess of one thousand six hundred (1,600) hours in a calendar year unless specifically approved by the Board based upon documentation submitted by the Applicant. ()

04. Apprenticeship Program. The Board may approve Apprenticeship Programs that are designed to provide either experience or experience and education for individuals seeking licensure in Idaho as an Operator-In-Training, or a Class I, II, III, or IV Water or Wastewater Operator. A basic Apprenticeship Program is designed to provide hands on experience and education related to the operation of Class I and II facilities. An advanced Apprenticeship Program is designed to provide hands on experience and education related to Class III and IV facilities. All approved Apprenticeship Programs will be registered with the U.S. Department of Labor, Office of Apprenticeship, meet the Standards of Apprenticeship developed by the U.S. Department of Labor and meet the intent of these rules regarding the education and experience necessary for Operator-In-Training, Class I, II, III, and IV

licensure. Sponsors of Apprenticeship Programs must seek Board approval by application along with all supporting documentation necessary to establish the program meets the intent of these rules regarding education and experience. The Board may revoke the approval of any program that fails to comply with the Board’s rules. ()

301. -- 309. (RESERVED)

310. REQUIREMENTS FOR OPERATOR-IN-TRAINING LICENSE.

Each applicant for an Operator-In-Training License must meet the following requirements: ()

01. Education. Possess a high school diploma or GED; and ()

02. Examination. Pass the relevant Class I examination or be enrolled in an Apprenticeship Program approved by the Board. ()

311. -- 314. (RESERVED)

315. REQUIREMENTS FOR A VERY SMALL WATER SYSTEM LICENSE.

To qualify for a Very Small Water System license an operator must meet the following requirements: ()

01. Education. Possess a high school diploma or GED and; ()

02. Experience. Document eighty-eight (88) hours of acceptable on-site operating experience at a water system; and ()

a. Complete an approved six-hour water treatment course or an approved six-hour chlorination course or a combination of said approved courses equaling six (6) hours; and ()

b. Complete an approved six-hour water distribution course; and ()

03. Examination. Pass the relevant very small water system examination. ()

316. -- 319. (RESERVED)

320. REQUIREMENTS FOR A VERY SMALL WASTEWATER SYSTEM LICENSE.

To qualify for a Very Small Wastewater System license, an operator must meet the following requirements: ()

01. Education. Possess a high school diploma or GED; and ()

02. Experience. Document fifty (50) hours of acceptable on-site operating experience at a wastewater collection system; and ()

a. Fifty (50) hours of acceptable relevant on-site operating experience at a wastewater treatment system or lagoon; and ()

b. Complete an approved six-hour pumps and motors course or an approved six-hour collection course or a combination of said approved courses equaling six (6) hours; and ()

c. Complete an approved six-hour lagoon operation and maintenance course; or an approved six-hour large soil absorption system course or an approved six-hour wastewater treatment course or a combination of said approved courses equaling six (6) hours; and ()

03. Examination. Pass the relevant lagoon examination. ()

321. -- 324. (RESERVED)

325. REQUIREMENTS FOR CLASS I RESTRICTED WATER OR WASTEWATER LICENSE.

To qualify for a Class I Restricted water or wastewater license an operator must meet the following requirements:

- 01. **Education.** Possess a high school diploma or GED; and ()
- 02. **Experience.** Document two hundred sixty (260) hours of acceptable relevant on-site operating experience during twelve (12) consecutive months with the system and complete sixteen (16) hours of continuing education relevant to the license; and ()
- 03. **Examination.** Pass the relevant Class I examination. ()
- 04. **Restricted License Upgrade.** Upon obtaining one thousand six hundred (1,600) hours of supervised on-site operating experience for each license, the operator shall be eligible to apply for an unrestricted Class I license. There is no limit on the amount of time needed to obtain the necessary experience to qualify for the unrestricted license. A restricted license is limited to a specific system. ()

326. -- 327. (RESERVED)

328. REQUIREMENTS FOR A CLASS I OPERATOR LICENSE.

To qualify for a Class I operator license an applicant must meet the following requirements: ()

- 01. **Education.** Possess a high school diploma or GED; and ()
- 02. **Experience.** Document one (1) year of acceptable relevant on-site operating experience at a Class I or higher system or successfully complete one (1) year of an Approved Apprenticeship Program; and ()
- 03. **Examination.** Pass the relevant Class I examination. ()

329. (RESERVED)

330. REQUIREMENTS FOR A CLASS II OPERATOR LICENSE.

To qualify for a Class II license an applicant must meet the following requirements: ()

- 01. **Education.** Possess a high school diploma or GED; and ()
- 02. **Experience.** Document three (3) years of acceptable relevant on-site operating experience at a Class I or higher system or successfully complete an Approved Apprenticeship Program; and ()
- 03. **Examination.** Pass the relevant Class II examination. ()

331. -- 334. (RESERVED)

335. REQUIREMENTS FOR A CLASS III OPERATOR LICENSE.

To qualify for a Class III license an applicant must meet the following requirements: ()

- 01. **Education.** Possess a high school diploma or GED and two (2) years of post-high school education in the environmental control field, engineering or related science or successful completion of an Approved Apprenticeship Program; and ()
- 02. **Experience.** Document four (4) years of acceptable relevant on-site operating experience, including two (2) years of responsible charge of a major segment of a system in the same or next lower class, of a Class I or higher system for collection or distribution or Class II or higher system for treatment; and ()
- 03. **Examination.** Pass the relevant Class III examination. ()

336. -- 339. (RESERVED)

340. REQUIREMENTS FOR A CLASS IV OPERATOR LICENSE.

To qualify for a Class IV license an applicant must meet the following requirements; ()

01. Education. Possess a high school diploma or GED and four (4) years of post-high school education in the environmental control field, engineering or related science; and ()

02. Experience. Document four (4) years of acceptable relevant on-site operating experience, including two (2) years of responsible charge of a major segment of a system in the same or next lower class, at a Class I or higher system for collection or distribution or Class III or higher system for treatment; and ()

03. Examination. Pass the relevant Class IV examination. ()

341. -- 344. (RESERVED)

345. REQUIREMENTS FOR A LAGOON OPERATOR LICENSE.

To qualify for a lagoon license, an operator must meet the following requirements; ()

01. Education. Possess a high school diploma or GED; and ()

02. Experience. Document twelve (12) consecutive months of acceptable on-site operating experience at a Lagoon system; and ()

03. Examination. Pass the relevant Lagoon examination. ()

346. -- 349. (RESERVED)

350. REQUIREMENTS FOR A WASTEWATER LAND APPLICATION LICENSE.

To qualify for a Wastewater Land Application license, an operator must meet the following requirements: ()

01. Education. Possess a high school diploma or GED: and ()

02. Experience. Document a minimum six (6) months of on-site operating experience at a wastewater land application system; and ()

03. Examination. Pass the relevant Wastewater Land Application examination; and ()

04. Other. Possess a wastewater Class I or higher operation license. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. ()

351. -- 354. (RESERVED)

355. REQUIREMENTS FOR A BACKFLOW ASSEMBLY TESTER LICENSE.

To qualify for a backflow assembly tester license, an applicant must meet the following requirements: ()

01. Education. Possess a high school diploma or GED, and ()

02. Experience. Document successful completion of a Board-approved backflow assembly tester training program in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of theory instruction, practical instruction, and a practical examination in compliance with the USC Test procedures; and ()

03. Examination. Pass the relevant Backflow Assembly Tester examination. ()

356. -- 359. (RESERVED)

360. REQUIREMENTS FOR WASTEWATER LABORATORY ANALYST LICENSE.

To qualify for a wastewater laboratory analyst license, an applicant must meet the following requirements for the relevant class: ()

01. Class I. ()

a. Possess a high school diploma or GED; and ()

b. Document one (1) year of acceptable lab experience at a class I or higher system; and ()

c. Pass the relevant class I laboratory analyst examination. ()

02. Class II. ()

a. Possess a high school diploma or GED; and ()

b. Document three (3) years of acceptable lab experience at a class I or higher system; and ()

c. Pass the relevant class II laboratory analyst examination. ()

03. Class III. ()

a. Possess a high school diploma or GED and two (2) years of post-high school education in the environmental control field, engineering or related science; and ()

b. Document four (4) years of acceptable lab experience at a class II or higher system; and ()

c. Pass the relevant class III laboratory analyst examination. ()

04. Class IV. ()

a. Possess a high school diploma or GED and four (4) years of post-high school education in the environmental control field, engineering or related science; and ()

b. Document four (4) years of acceptable lab experience at a class III or higher system; and ()

c. Pass the relevant class IV laboratory analyst examination. ()

361. -- 374. (RESERVED)

375. SUBSTITUTIONS.

01. Substituting Education for Experience. Applicants may substitute approved education for operating and responsible charge experience as specified below. ()

a. No substitution for on-site operating experience shall be permitted for licensure as a very small system operator or a Class I operator. ()

b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both on-site operating and responsible charge) has been met by actual on-site operating experience. ()

c. For Class II, a maximum of one and one-half (1½) years of post-high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. ()

d. For Class III and IV, a maximum of two (2) years of post-high school education in the

environmental control field, engineering or related science may be substituted for two (2) years of on-site operating experience; however the applicant for Class III must still have one (1) year of responsible charge experience and the applicant for Class IV must have two (2) years of responsible charge experience. ()

e. Education substituted for on-site operating experience may not be also credited toward the education requirement. ()

f. One (1) year of post-high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required on-site operating or responsible charge experience. ()

02. Substituting Experience for Education. Where applicable, approved on-site operating and responsible charge experience may be substituted for education as specified below: ()

a. One (1) year of on-site operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. ()

b. For Class III and IV, additional responsible charge experience (that exceeding the two-year class requirements) may be substituted for post-high school education on a one (1) for one (1) basis: one (1) year additional responsible charge equal one (1) year post-high school education. ()

03. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes, but is not limited to, the following: ()

a. Experience as an environmental or operations consultant; ()

b. Experience in an environmental or engineering branch of federal, state, county, or local government; ()

c. Experience as a wastewater collection system operator; ()

d. Experience as a wastewater treatment plant operator; ()

e. Experience as a water distribution system operator and/or manager; ()

f. One (1) year of post-high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. ()

g. Experience in waste treatment operation and maintenance. ()

h. Experience as a laboratory analyst can be counted as wastewater operating experience for up to one-half (1/2) of the wastewater operating experience requirement but cannot be counted as responsible charge experience. ()

i. Experience as a wastewater operator can be counted as laboratory analyst experience for up to one-half (1/2) of the laboratory analyst experience requirement. ()

04. Equivalency Policy. Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: ()

a. High School - High School diploma equals GED or equivalent as approved by the Board equals four (4) years. ()

b. College - Thirty (30) credits equal one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the Board). ()

c. Continuing Education Units (CEU) for operator training courses, seminars, related college courses,

and other training activities. Ten (10) classroom hours equal one (1) CEU; forty-five (45) CEUs equal one (1) year of college. ()

376. -- 399. (RESERVED)

400. ENDORSEMENT.

The board may waive the examination requirements and issue the appropriate license for applicants holding licenses issued by other States that have equivalent license requirements and who otherwise meet the requirements set forth in Subsections 150.02 and 150.03. ()

401. -- 449. (RESERVED)

450. WASTEWATER GRANDPARENT PROVISION.

The board issued grandparent licenses to wastewater operators who provided documentation satisfactory to the board of being in responsible charge of an existing public wastewater system on or before April 15, 2006. ()

01. Grandparent License. A grandparent license allowed the licensee to operate in responsible charge of the specific facility identified in the original application. The license is site specific and non-transferable and does not grant authority for the holder to practice at any other system in any capacity as an operator. ()

02. License Requirements. A grandparent licensed wastewater operator is required to meet all other requirements including the continuing education and renewal requirements. ()

03. Wastewater System Classification Limitations. The grandparent license becomes invalid any time the classification of the wastewater system changes to a higher classification. ()

451. -- 499. (RESERVED)

500. CONTINUING EDUCATION.

01. Continuing Education Requirement. Each licensee must successfully complete a minimum of six (6) hours (0.6 CEUs) of approved continuing education annually for license renewal, except that backflow assembly testers will complete an eight (8) hour refresher course every two (2) years for license renewal. Continuing education must be earned in a subject matter relevant to the field in which the license is issued. A licensee holding one (1) or more drinking water license(s) only needs to complete the annual continuing education requirement for one (1) license. A licensee holding one (1) or more wastewater license(s) only needs to complete the annual continuing education requirement for one (1) license. A licensee holding both drinking water and wastewater class licenses will complete a minimum of six (6) hours annually for the drinking water license plus six (6) hours annually for the wastewater license. ()

a. Each licensee will submit to the Board an annual license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the CE requirements have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. ()

b. A licensee will be considered to have satisfied their CE requirements for the first renewal of their license. ()

c. A water or wastewater licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. The same hours may not be carried forward more than one (1) renewal cycle. ()

d. Continuing Education hours for approved operator training courses, seminars, related college courses, and other training activities may be converted to Continuing Education Units (CEU) as follows: Six (6) classroom hours = point six (0.6) CEU. ()

02. Subject Material. The subject material of the continuing education requirement will be relevant to

the license for which the continued education is required. “Relevant” will be limited to material germane to the operation, maintenance and administration of drinking water and wastewater systems as referenced in Chapter 24, Title 54, Idaho Code, and includes those subjects identified in the “need to know” criteria published by the Associations of Boards of Certification. ()

03. Course Approval. All course providers will submit requests for approval of continuing education courses to the Board in writing no less than thirty (30) days prior to the course being offered, on a form approved by the Board that includes: ()

- a. The name and qualifications of the instructor or instructors; ()
- b. The date, time and location of the course; ()
- c. The specific agenda for the course; ()
- d. The type and number of continuing education credit hours requested; ()
- e. A statement of how the course is believed to be relevant as defined; ()
- f. Any certificate of approval from a governmental agency if the course has been previously approved for continuing education; ()
- g. The training materials; ()
- h. Other information as may be requested by the Board. ()
- i. Upon review of all information requested, the Board may either approve or deny any request for a course. Board approval of a course will be granted for a period not to exceed five (5) years or until the course materials or instructors are changed. ()

04. Approved Courses. Those continuing education courses which are relevant and approved by the states of Nevada, Oregon, Montana, Utah, Wyoming, and Washington are deemed approved by the Board. ()

05. Verification of Attendance. It will be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. This verification will be maintained by the licensee and provided upon request of the Board or its agent. ()

06. Distance Learning and Independent Study. The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the licensee in a face-to-face setting with the course instructor. The licensee will maintain documentation of the nature and details of the course and evidence that the licensee successfully completed the course, which will be made available to the Board upon request. ()

07. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements is subject to disciplinary action by the Board. ()

08. Exemptions. The Board may waive the continuing education requirement or extend the deadline up to ninety (90) days for any one (1) or more of the following circumstances. The licensee requests the exemption and provides any information requested to assist the Board in making a determination. An exemption may be granted at the sole discretion of the Board. ()

- a. The licensee is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for licensure renewal and has complied with the requirements of that state or

district. ()

b. The licensee is a government employee working outside the continental United States. ()

c. The licensee documents individual hardship, including health (certified by a medical doctor) or other good cause. ()

501. -- 599. (RESERVED)

600. RENEWAL OR REINSTATEMENT OF LICENSE.

01. Expiration Date. All licenses expire and must be renewed annually on forms approved by the Board in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. ()

02. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the applicant shall submit proof of having completed the total number of required continuing education for each year the license or certificate was cancelled. ()

03. Operator-in-Training License. Applicants for the operator-in-training license shall, upon compliance with the requirements of Subsections 300.01 and 300.02, be issued a “one-time” non-renewable license for the purpose of gaining supervised experience as an operator-in-training (OIT). This license will be valid for three (3) years from the date of issue. ()

04. Backflow Assembly Testers. Backflow assembly testers shall complete a Board-approved eight (8) hour refresher course every two (2) years for license renewal. ()

05. Wastewater Land Application License. Wastewater land application licenses shall not be renewed unless the licensee also maintains a current wastewater treatment license. ()

601. -- 649. (RESERVED)

650. BACKFLOW ASSEMBLY TESTER CODE OF ETHICS AND STANDARDS OF CONDUCT.

All backflow assembly tester licensees shall comply with the Idaho Backflow Assembly Tester Code of Ethics and Standards of Conduct as approved by the Board and attached to these rules as Appendix A. ()

651. -- 699. (RESERVED)

700. DISCIPLINE.

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensee for each violation of Chapter 24, Title 54, Idaho Code. ()

02. Costs and Fees. The Board may order a licensee to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Chapter 24, Title 54, Idaho Code. ()

701. -- 999. (RESERVED)

APPENDIX A

IDAHO BACKFLOW ASSEMBLY TESTER CODE OF ETHICS AND STANDARDS OF CONDUCT

The purpose of this rule is to protect public health by setting minimum requirements and standards for licensed Backflow Assembly Testers in Idaho who inspect and field test backflow assemblies, backflow prevention devices and air gaps that protect public water systems.

1. Code of Ethics -- A licensed Backflow Assembly Tester shall:

- a. At all times, act in accordance with his/her primary obligation to perform his/her duties with due care and diligence to protect the safety, health and welfare of the public;
- b. Comply with the laws and rules governing Backflow Assembly Testers and all applicable state and federal laws and regulations relating to backflow assembly testing;
- c. Perform only those duties consistent with and appropriate to his/her experience, training, skills, abilities, and licensure; and
- d. Be objective and truthful in all professional reports, statements, or testimony and include all relevant and pertinent information in such reports, statements or testimony.

2. Definitions:

- a. Backflow Prevention Assembly: an approved assembly such as a Double Check Valve Assembly (DCVA), a Pressure Vacuum Breaker Assembly (PVBA), a Reduced Pressure Backflow Assembly (RPBA), or a Spill-Resistant Pressure Vacuum Breaker Assembly (SVBA) used for the protection of the public water supply according to the provisions of IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” as administered by DEQ.
- b. Backflow Prevention Device: an approved device such as an Atmospheric Vacuum Breaker (AVB), which does not contain valves or test ports, or a method, such as an air gap, that is utilized to prevent cross connections to a public water supply.
- c. Calibration/Verification: the annual verification, calibration, or both of a backflow assembly field test kit by an instrument calibration laboratory/facility or by a person qualified to verify and calibrate a field test kit such as a manufacturer, dealer licensed to calibrate or verify field test kits, or calibration technician.
- d. Customer: means the owner of the property or his/her authorized or appointed agent.
- e. Field Test Kit: an instrument, either mechanical or electronic in design, and all related fittings, tools, equipment and appurtenances necessary to perform field verification tests on backflow prevention assemblies.

3. Standards of Conduct

- a. Principle 1 -- A Backflow Assembly Tester shall act only within the scope of practice as set forth in the Board’s laws and rules. A Backflow Assembly Tester must use due care and diligence in performing his/her duties.
- b. Principle 2 -- When conducting inspections and field tests of backflow prevention assemblies, a Backflow Assembly Tester must use test procedures that comply with standard field test procedures.
- c. Principle 3 -- The Backflow Assembly Tester shall observe or inspect existing installations of backflow prevention assemblies to identify whether the assembly is properly installed and whether, in the opinion of the Backflow Assembly Tester, the assembly is adequate and appropriate for the degree of hazard posed to the Public Water System having jurisdiction over the assembly.
 - i. A Backflow Assembly Tester must report improperly installed assemblies to the customer and the Public Water System having jurisdiction over the backflow prevention assembly and also must note the discrepancy on the test report and submit the test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.
 - ii. A Backflow Assembly Tester must note discrepancies regarding inadequate or inappropriate backflow prevention assemblies on the test report and submit the test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

d. Principle 4 -- A Backflow Assembly Tester shall use a properly working and calibrated field test kit that meets the requirements of the Pacific Northwest Section of the American Water Works Association Cross Connection Control Manual, Seventh Edition, November 2012. When requested by a Public Water System, a Backflow Assembly Tester shall submit the most recent calibration report that verifies the accuracy of the field kit. When requested by a Public Water System, a Backflow Assembly Tester shall submit proof of current licensure in Idaho as a Backflow Assembly Tester.

e. Principle 5 -- The Backflow Assembly Tester must competently use a field test kit, all tools, and other equipment and appurtenances necessary to inspect and field test backflow prevention assemblies, inspect air gaps and backflow prevention devices.

f. Principle 6 -- When a backflow prevention assembly passes a field test, the Backflow Assembly Tester shall submit within fifteen (15) business days of performing the field test a passing test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

g. Principle 7 -- When a backflow prevention assembly is defective or fails to pass the field test, the Backflow Assembly Tester shall submit immediately, if possible, but no later than within two (2) business days, a failing field test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

h. Principle 8 -- The Backflow Assembly Tester shall complete a test report for each backflow prevention assembly for which the Backflow Assembly Tester conducts a field test. A test report must be legible and contain all relevant and pertinent information pertaining to the field test including, at a minimum, the make, model, size, serial number, orientation, and test results for each test conducted.

i. A Backflow Assembly Tester shall record data and sign test reports only for backflow prevention assemblies for which the Backflow Assembly Tester has personally conducted the field test.

ii. A Backflow Assembly Tester shall not falsify the results of a backflow prevention assembly field test or inspection.