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**IDAPA 16
TITLE 04
CHAPTER 17**

16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES

000. LEGAL AUTHORITY.

The Idaho Legislature, pursuant to Section 39-4605, Idaho Code, has empowered the Board of Health and Welfare with broad authority to develop and coordinate services for persons with developmental disabilities, so that the needs of each such person can be met. The authority delegated includes the power to promulgate standards and rules.

(7-1-95)

001. TITLE AND SCOPE.

01. Title. These rules are to be cited as IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies".

(7-1-95)

02. Scope. These rules contain and establish standards and minimum requirements for residential habilitation agencies which provide services to persons with developmental disabilities under agreement and in connection with programs funded in any part by the Department of Health and Welfare. The provisions are intended to regulate agencies so that services to consumers will optimize consumer opportunities for independence and self-determination while assuring adequate supports, services, consumer satisfaction and health and safety. As a component of the service delivery system in Idaho for persons with developmental disabilities, residential habilitation agencies will provide individualized services and supports encouraging consumer choice, providing the greatest degree of independence possible, enhancing the quality of life, and maintaining community integration and participation. Services provided by such agencies are intended to be person-centered and consumer-driven, and based on a person centered plan to meet each consumer's needs for self-sufficiency, medical care and personal development with goals that safely encourage each consumer to become a productive member of the community in which he lives.

(7-1-95)

002. (RESERVED).

003. ADMINISTRATIVE APPEALS.

Contested case hearings shall be governed according to the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings".

(7-1-95)

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Abuse. Any conduct of an employee, affiliated residential habilitation provider or contractor of an agency as a result of which a person suffers verbal aggression or humiliation, skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death, or the circumstances indicate that such condition or death, may not be the product of accidental occurrence pursuant to Section 39-5202, Idaho Code.

(7-1-95)

02. Administrator. The individual who is vested with primary responsibility for the direction and control of an agency, and who has power to legally bind the agency to contracts.

(7-1-95)

03. Advocate. An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a person with developmental disabilities. A consumer may act as his own advocate.

(7-1-95)

04. Agency. Any business entity that directly provides or affiliates with residential habilitation providers who provide residential habilitation services under a Home and Community Based Services waiver for adults with developmental disabilities.

(7-1-95)

- 05. Appeal.** A method to insure personal, civil and human rights by receiving, investigating, resolving, and documenting complaints related to the provision or termination of services of the residential habilitation services agency in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-95)
- 06. Audit.** A methodical examination and review. (7-1-95)
- 07. Board.** The Idaho State Board of Health and Welfare. (7-1-95)
- 08. Business Entity.** A public or private organization owned or operated by one (1) or more persons. (7-1-95)
- 09. Certificate.** A permit to operate a residential habilitation agency. (7-1-95)
- 10. Certifying Agency.** Regional units of the Department that conduct inspections and surveys and issue certificates based on the residential habilitation agency's compliance with this chapter. (7-1-95)
- 11. Chemical Restraint.** The use of any medication that results or is intended to result in the modification of behavior without an accompanying behavior management program. (7-1-95)
- 12. Complaint Investigation.** An investigation of an agency to determine the validity of an allegation against it and to identify solutions to resolve conflicts between the complainant and the agency. (7-1-95)
- 13. Consumer.** A person who is a recipient of residential habilitation services. (7-1-95)
- 14. Department.** The Idaho Department of Health and Welfare. (7-1-95)
- 15. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means chronic disability of a person which appears before the age of twenty-two (22) years of age and: (7-1-95)
- a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-95)
 - b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-95)
 - c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (7-1-95)
- 16. Deficiency.** A determination of non-compliance with a specific rule or part of a rule. (7-1-95)
- 17. Director.** Director of the Idaho Department of Health and Welfare or his designee. (7-1-95)
- 18. Exploitation.** An action which may include the misuse of a vulnerable consumer's funds, property, services, or resources by another person for profit or advantage. (7-1-95)
- 19. Full Certificate.** A certificate issued by the Department to residential habilitation agencies complying with this chapter. (7-1-95)
- 20. Governing Authority.** The designated person or persons who assume full responsibility for the conduct and operations of the residential habilitation services agency. (7-1-95)
- 21. Government Unit.** The state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof. (7-1-95)

22. Guardian. A legally appointed person who has the care of the person or property of another, pursuant to Section 66-404, Idaho Code. (7-1-95)

23. Implementation Plan. Written documentation of consumers' needs, desires, goals and measurable objectives, including documentation of planning, ongoing evaluation, data-based progress and consumer satisfaction of the program developed, implemented, and provided by the agency specific to the Individual Support Plan.(7-1-95)

24. Individual Support Plan. The written individualized plan approved by the Department, which must be based on a person centered planning and assessment process outlining the consumers' needs, desires, goals and objectives and include the specific types, amounts, frequency and duration of waiver services to be provided by the agency. (7-1-95)

25. Individual Support Plan Team. The participants who develop the Individual Support Plan, which includes at minimum the consumer and the service coordinator chosen by the consumer. The Individual Support Plan team may include others identified by the consumer or agreed upon by the consumer and the Department as important to the process. (7-1-95)

26. Measurable Objective. A statement which specifically describes the skill to be acquired or service/support to be provided, includes quantifiable criteria for determining progress towards and attainment of the service, support or skill, and identifies a projected date of attainment. (7-1-95)

27. Mechanical Restraint. Any device that the consumer cannot remove easily that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body or environment. Excluded are devices used to achieve proper body position, balance, or alignment. (7-1-95)

28. Medication. Any substance or drug used to treat a disease, condition or symptoms which may be taken orally, injected or used externally and is available through prescription or over-the-counter. (7-1-95)

29. Neglect. The negligent failure to provide those goods or services which are reasonably necessary to sustain the life and health of a person pursuant to Section 39-5302 (8), Idaho Code. (7-1-95)

30. Outcome Based Review. An on-site review conducted by a trained reviewer authorized by the Department to determine consumer satisfaction with the services received and improvement or impact upon his lifestyle following implementation of the Individual Support Plan. (7-1-95)

31. Person Centered Planning Process. A Department approved means by which the consumer and his Individual Support Plan team assess the needs, desires, goals and objectives of the consumer to develop and implement an Individual Support Plan. (7-1-95)

32. Physical Restraint. Any manual method that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body. Excluded are physical guidance and prompting techniques of brief duration. (7-1-95)

33. Physician. Any person licensed as required by Title 54, Chapter 18, Idaho Code. (7-1-95)

34. Psychosocial Information. A combined summary of psychological and social histories of a consumer designed to inform the Individual Support Plan Team of and accurate reflection of the consumer's current skills, abilities, and needs. (7-1-95)

35. Progress Note. A written notation, dated and signed by a member of the Individual Support Plan team or service provider, that documents facts about the consumer's assessment, services provided, and the consumer's response during a given period of time. (7-1-95)

36. Punishment. Any procedure in which an adverse consequence is presented that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a consumer's rights or freedom for the purpose of reducing

the rate, intensity, duration, or probability of a particular behavior. (7-1-95)

37. QMRP. Qualified Mental Retardation Professional as defined in 42 CFR 483.430. (7-1-95)

38. Residential Habilitation. Services consisting of an integrated array of individually-tailored services and supports furnished to an eligible consumer which are designed to assist them to reside successfully in their own homes, with their families, or alternate family home. (7-1-95)

39. Reviewer. A person or other entity authorized by the Department to conduct reviews to determine compliance with the program requirements and consumer satisfaction with the services. (7-1-95)

40. Rule. A requirement established by State, Federal, or local government pursuant to law and having the effect of law. (7-1-95)

41. Seclusionary Time Out. The contingent removal of an individual from a setting in which reinforcement is occurring that is designed to result in a decrease in the rate, intensity, duration or probability of the occurrence of a response, and entails the removal of the individual to an isolated setting. (7-1-95)

42. Substantial Compliance. An agency is in substantial compliance with these rules when there are no deficiencies which would endanger the health, safety or welfare of the consumers. (7-1-95)

43. Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. (7-1-95)

44. Targeted Service Coordinator. A regionally enrolled provider of the Department who is qualified by training and experience to develop and coordinate individual supports and services for eligible consumers of the Department, as defined in IDAPA 16.03.09.118, "Rules Governing the Medical Assistance Program". (7-1-95)

45. Transition Plan. An interim plan developed by the residential habilitation agency defining activities to assist the consumer to transition out of residential habilitation services from that agency. (7-1-95)

46. Waiver Services. Individually tailored services and supports as amended under Waiver Number 0076.90 (B) provided by an agency to an eligible recipient to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage choice, and to achieve and maintain community integration and participation. (7-1-95)

011. -- 099. (RESERVED).

100. CERTIFICATION - GENERAL REQUIREMENTS.

After, July 1, 1995, no person, firm, partnership, association or corporation within the state and no state or local public agency shall operate, establish, manage, conduct or maintain a residential habilitation agency without first obtaining a valid certificate issued by the certifying agency of the Department. (7-1-95)

01. Application. An application for a certificate shall be made to the regional office of the Department upon forms provided by it and shall contain such information as it reasonably requires, which shall include affirmative evidence of ability to comply with such reasonable standards and rules as are lawfully adopted by the Board. (7-1-95)

02. Issuance - Full Certificate. Upon receipt of an application for certification, the certifying agency shall issue a certificate if the applicant meets the requirements established under this chapter. A certificate, unless suspended or revoked, must be renewed each and every year by the certifying agency. A certificate to provide residential habilitation services shall be issued specifically for the persons or governmental units named in the application and shall not be transferable or assignable except with written approval of the certifying agency. Every agency shall be designated by a distinctive name in applying for a certificate, and the name shall not be changed without first notifying the certifying agency in writing at least thirty (30) days prior to the date the proposed change in name is to be effective. Certificates shall be posted in a conspicuous place on the certified premises. (7-1-95)

03. Denial. The certifying agency may deny any application when persuaded by evidence that such conditions exist as to endanger the health or safety of any consumer. (7-1-95)

a. Additional causes for denial of certificate may include: (7-1-95)

i. The residential habilitation agency does not meet the needs of consumers as written on the Individual Support or Implementation Plans which will violate the consumers' rights; or (7-1-95)

ii. The residential habilitation agency does not meet requirements for certification to the extent that it hinders its ability to provide quality services that comply with the rules for residential habilitation agencies; or (7-1-95)

iii. The residential habilitation agency has a history of repeat deficiencies. (7-1-95)

b. Before denial is final, the certifying agency shall provide the opportunity for a hearing at which time the owner or sponsor of an agency may appear and show cause why the certificate should not be denied. A waiver of a specific rule or standard may be granted by the certifying agency in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any consumer. The decision to grant a waiver shall not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the certifying agency. Contested case hearings, including denial and revocation, shall be conducted pursuant to IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-95)

04. Revocation. The certifying agency may revoke any certificate when persuaded by the evidence that such conditions exist which endanger the health, safety, or welfare of any consumer under the responsibility of the agency, or that the agency is not in substantial compliance with these rules. Additional causes for revocations of a certificate may include: (7-1-95)

a. The agency has a history of repeat deficiencies; or (7-1-95)

b. The agency has been denied or has had revoked any certificate to operate a health or residential habilitation agency or has been convicted of operating any residential habilitation agency without a certificate or has been enjoined from operating such agency within two (2) years from the date of application; or (7-1-95)

c. The agency lacks personnel sufficient in number or qualifications by training, experience, or judgment, to properly provide services to the proposed or actual numbers, and abilities and disabilities of consumers; or (7-1-95)

d. The agency has been guilty of fraud or deceit or misrepresentation in the preparation of the application or other documents required by the certifying agency; or (7-1-95)

i. Has been guilty of fraud or deceit or misrepresentation or dishonesty associated with the operation of a certified residential habilitation agency; or (7-1-95)

ii. Has been guilty of negligence or abuse or neglect or assault or battery while associated with the provision of services in its operation; or (7-1-95)

e. The agency refuses to allow inspection of all residential habilitation records; or (7-1-95)

f. The agency is not in substantial compliance with the provisions for services of consumers' personal, civil or human rights outlined in Subsections 402.01.a. through 402.01.h.; or (7-1-95)

g. When the Department finds the public health, safety, or welfare imperatively require emergency action, a certificate may be summarily suspended pending proceedings for revocation or other action. (7-1-95)

05. Emergency Powers Of The Director. In the event of an emergency endangering the life or safety of a consumer receiving services from an agency, the Director may summarily suspend or revoke any residential

habilitation certificate. As soon thereafter as practicable, the Director shall provide an opportunity for a hearing.

(7-1-95)

06. Injunction To Prevent Operation Without Certificate. Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a certificate required under this chapter. (7-1-95)

07. Confidential Information. Information received by the Department through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such a manner as to identify consumers of residential habilitation agencies except in a proceeding involving the question of certification. Public disclosure of information shall be governed by IDAPA 16.05.01, "Use and Disclosure of Department Records". Nothing in this chapter, however, shall be construed, nor shall any rule be promulgated under this section, as to impair, restrict, or alter the confidentiality and privilege afforded the consumer and physician communications, including without limitation, documentation thereof in records of agencies, or communications to and with assisting persons, or entities, nor shall this chapter be construed to amend by implication such physician-consumer communication privilege as provided elsewhere in rule code, including without limitation, Section 9-320(4), Idaho Code, which shall remain inviolate. In addition to the information subject to public disclosure by law, the following information is also subject to disclosure: (7-1-95)

a. Name of agency, its owner(s), the administrator, and location; and (7-1-95)

b. Official findings of deficiencies based on survey reports by the certifying agency; and (7-1-95)

c. Plan of correction between the residential habilitation agency and the certifying agency; and (7-1-95)

d. Comments furnished by the residential habilitation agency and the certifying agency. (7-1-95)

08. Conformity. Applicants for certification and certified residential habilitation agencies shall conform to all applicable rules of the Department. (7-1-95)

09. Inspection Of Residential Habilitation Records. The residential habilitation agency and all records required under these rules shall be accessible at any reasonable time to authorized representatives of the Department for the purpose of inspection with or without prior notice. Refusal to allow such access shall result in revocation of the residential habilitation agency's certificate. (7-1-95)

10. Agency Provider Training. The Department shall assure that direct service providers of all residential habilitation service agencies receive ongoing training in the provision of services and supports to consumers. (7-1-95)

101. CHANGE OF OWNERSHIP, ADMINISTRATOR OR LESSEE.

01. Notification To Department. Because certificates are not transferable from one (1) individual to another or from one (1) lessee to another or from one (1) location to another, when a change of ownership, lease or locations is contemplated, the agency must be recertified and implement the same procedure as an agency that has never been certified. When a change of a certified agency's ownership, administrator, lessee, title, or address occurs, the owner or designee shall notify the Department in writing. (7-1-95)

02. New Application Required. A new application must be submitted in the instance of a change of ownership or lessee to the certifying agency at least sixty (60) days prior to the proposed date of change. (7-1-95)

03. Arms Length Agreement. Because of the inherently close relationship between the lessee and the lessor, an application for change of ownership of an agency that is being leased from a person who is in litigation for failure to meet certification standards or who has had his certificate revoked, shall include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. (7-1-95)

102. -- 199. (RESERVED).

200. QUALITY ASSURANCE OUTCOME REVIEW.

01. Responsibilities. The certifying agency shall conduct an outcome based review on each residential habilitation agency on a routine basis as specified in the service agreement. The outcome based review shall include at least the following: (7-1-95)

a. Review of consumer participation and satisfaction in residential habilitation services and identification, planning, and delivery; and (7-1-95)

b. An overall policy and administrative review and, if necessary, a clinical record review; and (7-1-95)

c. Assessment of the extent to which the agency's services meet the needs of the consumer as identified on the Individual Support Plan, and promote community integration and participation. (7-1-95)

201. ADMINISTRATION.

01. Scope. Each residential habilitation agency shall be organized and administered under one authority. If other than a single owner or partnership, the agency shall have a governing board which assumes full legal responsibility for the overall conduct of the agency. (7-1-95)

02. Structure. The administrative responsibilities of the agency shall be documented by means of a current organizational chart. (7-1-95)

03. Responsibilities. The governing authority shall assume responsibility for: (7-1-95)

a. Adopting appropriate organizational bylaws and policies and procedures; and (7-1-95)

b. Appointing an administrator qualified to carry out the agency's overall responsibilities in relation to written policies and procedures and applicable state and federal laws. The administrator shall participate in deliberation of policy decisions concerning all services; and (7-1-95)

c. Providing a continuing and annual program of overall agency evaluation; and (7-1-95)

d. Assuring that appropriate training, space requirements, support services, and equipment for staff or affiliated residential habilitation providers are provided to carry out assigned responsibilities; and (7-1-95)

e. Cooperating in participating in a system by which to coordinate with other service providers continuity of the delivery of residential habilitation services in the Individual Support Plan. (7-1-95)

202. ADMINISTRATOR.

An administrator shall be responsible and accountable for implementing the policies and procedures approved by the governing authority. (7-1-95)

01. Administrator Qualifications. Each agency shall have a designated administrator who: (7-1-95)

a. Is at least twenty-one (21) years of age; and (7-1-95)

b. Has not been convicted of any felony or fraudulent practices; and (7-1-95)

c. Has a minimum of three (3) years of experience in service delivery to persons with developmental disabilities with at least one (1) year having been in an administrative role. (7-1-95)

02. Absences. The administrator shall designate, in writing, a qualified person to perform the functions of the administrator to act in his absence. (7-1-95)

- 03. Responsibilities.** The administrator, or his designee, shall assume responsibility for: (7-1-95)
- a.** Developing and implementing written administrative policies and procedures which comply with applicable rules; and (7-1-95)
 - b.** Developing and implementing policies and procedures for staff and affiliated residential habilitation provider training, quality assurance, evaluation, and supervision; and (7-1-95)
 - c.** Conducting regular staff and affiliated residential habilitation provider meetings to review program and general consumer needs and plan appropriate strategies for meeting those needs; and (7-1-95)
 - d.** Maintaining adequate financial accounting records according to government accepted accounting principles; and (7-1-95)
 - e.** Making all records available to the Department for review or audit; and (7-1-95)
 - f.** Developing and implementing a policy addressing safety measures to protect consumers, staff, and affiliated residential habilitation providers as mandated by state and federal rules; and (7-1-95)
 - g.** Ensuring that agency personnel, and affiliated providers including those providing services under arrangement, practice within the bounds set forth by the applicable state licensure boards. (7-1-95)

203. STAFF AND AFFILIATED RESIDENTIAL HABILITATION PROVIDER TRAINING.

Training shall include orientation and ongoing training at a minimum as required by rules and the waiver document. Training is to be a part of the orientation training and shall be required initially prior to accepting consumers. All required training must be completed within six (6) months of employment or affiliation with a residential habilitation agency and documented in the employee or affiliated residential habilitation provider record. The agency shall ensure that all employees, affiliated residential habilitation providers, and contractors receive orientation training in the following areas: (7-1-95)

- 01. Rights.** Personal, civil, and human rights. (7-1-95)
- 02. Disabilities.** Developmental disabilities commensurate with the skills of consumers served. (7-1-95)
- 03. Understanding Of Consumers' Needs.** A basic understanding of the needs, desires, goals and objectives of consumers served. (7-1-95)
- 04. Supervision.** Appropriate methods of supervision. (7-1-95)
- 05. Review Of Services.** A review of the specific services that the consumer shall require. (7-1-95)
- 06. First Aid And CPR.** First aid, CPR, and universal precautions. (7-1-95)

204. -- 299. RESERVED.

300. POLICY AND PROCEDURE MANUAL.

A policy and procedure manual shall be developed by the residential habilitation agency for effectively implementing its objectives. It shall be approved by the governing authority. Policies and procedures shall be reviewed annually and revised as necessary. The manual shall, at a minimum, include policies and procedures reflecting the following: (7-1-95)

- 01. Scope Of Services And Area Served.** Scope of services offered and geographic area served. (7-1-95)
- 02. Acceptance Standards.** Standards for acceptance of consumers. (7-1-95)

- 03. Records Standards.** Standards for clinical records maintained. (7-1-95)
- 04. Required Services.** Procedures that must be performed by each service. (7-1-95)
- 05. Consumer Safety.** Consumer safety assessment procedures. (7-1-95)
- 06. Emergency Care.** Emergency care measures and crisis and emergency planning. (7-1-95)
- 07. Administrative Records.** Administrative records to be maintained. (7-1-95)
- 08. Personnel.** Personnel qualifications, responsibilities, and job description. (7-1-95)
- 09. Consumer Rights.** Personal, civil, and human rights and dissemination of consumer rights policies. (7-1-95)

301. PERSONNEL.

01. Policies. The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees, subcontractors or agents; and training, supervision, and quality assurance for affiliated providers. Written personnel policies shall be on file and provided to employees and affiliated residential habilitation providers which describe the employee's and affiliated residential habilitation provider's rights, responsibilities, and agency's expectations. (7-1-95)

02. Work Schedules. Coverage is scheduled to assure compliance with the Individual Support and Implementation Plans and all work schedules shall be kept in writing. The agency shall specify provisions and procedures to assure back-up coverage for those work schedules. (7-1-95)

03. Personnel Records. A record for each employee and affiliated residential habilitation provider shall be maintained from date of hire or affiliation for not less than one (1) year after the employee or affiliated residential habilitation provider is no longer employed by the agency, and shall include at least the following: (7-1-95)

- a.** Name, current address and phone number of the employee; and (7-1-95)
- b.** Social Security number; and (7-1-95)
- c.** Education and experience; and (7-1-95)
- d.** Other qualifications (if licensed in Idaho, the original license number and the date the current registration expires, or if certificated, a copy of the certificate); and (7-1-95)
- e.** Date of employment or affiliation; and (7-1-95)
- f.** Position in the agency; and (7-1-95)
- g.** Date of termination of employment or affiliation and reason for termination, if applicable; and (7-1-95)
- h.** Documentation of initial orientation and required training; and (7-1-95)
- i.** Evidence of current CPR and First Aid certifications; and (7-1-95)
- j.** Verification of completion of the criminal history check every five (5) years; and (7-1-95)
- k.** Evidence that the employee or affiliated residential habilitation provider has received a job description and understands his duties. (7-1-95)

302. SERVICE PROVISION PROCEDURES.

01. Admission Procedures. The following criteria shall all consumers receiving services from a residential habilitation agency: (7-1-95)

a. Agreement to serve each consumer shall be based on a recommendation of a person centered planning process conducted by the consumer's Individual Support Plan team, including his targeted service coordinator; (7-1-95)

b. The agency shall obtain authorization from the Department for reimbursement for each Medicaid covered eligible waiver service prior to providing residential habilitation services. (7-1-95)

02. Implementation Plan. Each consumer shall have an implementation plan which shall include goals and objectives specific to his Individual Support Plan residential habilitation program. (7-1-95)

03. Periodic Review. Review of services and consumer satisfaction shall be conducted at least quarterly or more often if required by the consumer's condition or program. (7-1-95)

04. Medication Standards. The agency shall maintain a policy describing the program's system for handling consumer medications which is in compliance with the IDAPA 23.01.01, "Rules of the Board of Nursing". (7-1-95)

05. Termination Procedures. The agency shall terminate residential habilitation services if, as a result of a person-centered planning process conducted by the Individual Support Plan team, it is demonstrated that the consumer is no longer in need of or desires Residential Habilitation services. The agency must notify the client in writing that the termination of services will occur and must develop a transition plan for termination of those services. The consumer will be entitled to appeal the termination. The agency may not terminate services when to do so would pose a threat of endangerment to the consumer or others. (7-1-95)

303. -- 399. (RESERVED).

400. CONSUMER RECORDS.

Each agency shall have and maintain a written policy outlining the required content of consumer records, criteria for completeness, and methodology to be used to ensure current and accurate records. An individual record shall be maintained for each consumer and retained for a period of three years following the consumer's termination of services. All entries made into a consumer record shall be dated and signed in ink. Records shall include at least the following information: (7-1-95)

01. Name, Address And Current Phone Number Of The Consumer. (7-1-95)

02. Social Security And Medicaid ID Numbers. (7-1-95)

03. Sex And Marital Status. (7-1-95)

04. Date Of Birth. (7-1-95)

05. Emergency Contacts. Names, addresses, and current phone numbers of family, advocates, friends, and persons to be contacted in case of an emergency. (7-1-95)

06. Physician, Dentist, And Other Health Care Providers. (7-1-95)

07. A List Of Medications, Diet, And All Other Treatments Prescribed For The Consumer. (7-1-95)

08. Results Of A History And Physical When Necessary. (7-1-95)

- 09. Results Of An Age Appropriate Functional Assessment, And Person Centered Plan.** (7-1-95)
- 10. Psychosocial Information.** (7-1-95)
- 11. Habilitation Program.** Habilitation program, including documentation of planning, continuous evaluation, and consumer satisfaction with the program. (7-1-95)
- 12. Record Of Significant Incidents, Accidents, Illnesses, And Treatments.** (7-1-95)
- 13. Daily Medication Log When Applicable.** (7-1-95)
- 14. Daily Record Of The Date, Time, Duration, And Type Of Service Provided.** (7-1-95)
- 15. Individual Support Plan.** The Individual Support Plan including implementation plans maintained by the agency, and data-based progress notes. (7-1-95)

401. CONFIDENTIALITY OF RECORDS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in IDAPA 16.05.01, "Use and Disclosure of Department Records". All consumer records shall be kept confidential and may be disclosed only with the written permission of the consumer, or the consumer's legal guardian, if one has been appointed or pursuant to Section 66-402, Idaho Code, in the event of any abuse, neglect, or exploitation reports. Any agency employee, affiliated residential habilitation provider or contractor shall report information about suspected abuse, neglect, or exploitation to adult protection workers and law enforcement officials, as required by law pursuant to Section 39-5202, Idaho Code, or to the Idaho Commission on Aging, Ombudsman Program, or the designated state protection and advocacy system for persons with developmental disabilities when applicable. (7-1-95)

402. CONSUMER RIGHTS.

01. Responsibilities. Each residential habilitation agency shall develop and implement a written policy outlining the personal, civil, and human rights which shall protect and promote the rights of each consumer including the following: (7-1-95)

- a.** Inform each consumer, or legal guardian, of the consumer's rights and the rules of the agency; and (7-1-95)
- b.** Allow and encourage individual consumers to exercise their rights as consumers of the agency, and as citizens of the United States, including the right to file complaints, and the right to due process; and (7-1-95)
- c.** Inform each consumer, or legal guardian, of the services to be received, the expected benefits and attendant risks of receiving those services, and of the right to refuse services, and alternative forms of services available; and (7-1-95)
- d.** Provide each consumer with the opportunity for personal privacy and ensure privacy during provision of services; and (7-1-95)
- e.** Ensure that consumers are not compelled to perform services for the agency, its employees, affiliated residential habilitation providers or contractors and ensure that consumers who do work for the agency, its employees, affiliated residential habilitation providers or contractors, are compensated for their efforts at prevailing wages and commensurate with their abilities; and (7-1-95)
- f.** Ensure that consumers have access to telephones, if living in a place other than their own home or the home of their family, with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their Individual Support Plans; and (7-1-95)
- g.** Ensure consumers the opportunity to participate in social, religious, and community group activities. (7-1-95)

403. CONSUMER FINANCES.

When the residential habilitation agency or its employees, affiliated residential habilitation providers or contractors are designated as the payee on behalf of the consumers, the agency shall establish and maintain an accounting system that: (7-1-95)

01. Consumer's Personal Finance Records. Assures a full and complete accounting of consumers' personal funds entrusted to the agency, or its employees, affiliated residential habilitation providers or contractors on behalf of consumers. Records of financial transactions shall be sufficient to allow a thorough audit of the consumer's funds. (7-1-95)

02. No Commingling Of Funds. Precludes any commingling of consumer funds with agency funds. (7-1-95)

03. Availability Of Funds. Ensures that the consumer's financial records shall be available on request to the consumer, consumer's legal guardian or advocate. (7-1-95)

404. COMMUNICATION WITH CONSUMERS, PARENTS, LEGAL GUARDIANS AND OTHERS.

The residential habilitation agency shall promote participation of consumers, legal guardians, relatives and friends in the process of providing services to a consumer unless their participation is unobtainable or inappropriate as prescribed by the Individual Support Plan; and (7-1-95)

01. Reciprocal Communication. Answer communications from consumers' families and friends promptly and appropriately; and (7-1-95)

02. Promotion Of Visits And Activities. Promote frequent and informal opportunities for visits, trips or vacations; and (7-1-95)

03. Notification Of Guardian Of Consumer's Condition. Notify promptly the consumer's legal guardian, if one exists, of any significant incidents, or changes in consumer's condition including serious illness, accident, death, or abuse. (7-1-95)

405. TREATMENT OF CONSUMERS.

The residential habilitation agency shall develop and implement written policies and procedures including definitions that prohibit mistreatment, neglect or abuse of the consumer to include at least the following: (7-1-95)

01. Interventions. Positive behavior interventions shall be used prior to and in conjunction with, the implementation of any restrictive intervention. (7-1-95)

02. No Abuse. Employees, affiliated residential habilitation providers or contractors of the agency shall not use physical, verbal, sexual, or psychological abuse or punishment. (7-1-95)

03. No Punishment. Employees, affiliated residential habilitation providers or contractors of the agency shall not withhold food or hydration that contributes to a nutritionally adequate diet. (7-1-95)

04. Reporting Violations. All allegations of mistreatment, neglect or abuse, as well as injuries of unknown origin, shall be reported immediately to the administrator and to other officials in accordance with state law through established procedures. (7-1-95)

05. Providing Evidence Of Violation. Agencies shall provide evidence that all alleged violations are thoroughly investigated and shall protect the consumer from the possibility of abuse while the investigation is in progress. (7-1-95)

06. Reporting Results Of Investigations. Results of all investigations shall be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action is taken. (7-1-95)

07. Proper Treatment Of Consumers. Consumers shall be treated with dignity and respect and their

personal choices and preferences are respected and honored whenever possible and consistent with their well being and their Individual Support Plan. (7-1-95)

08. Use Of Restraint On Consumers. No restraints, other than physical restraint in an emergency, shall be used on consumers prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on consumers: (7-1-95)

a. Chemical restraint. Employees, affiliated residential habilitation providers or contractors of the agency shall not use chemical restraint unless authorized by an attending physician. (7-1-95)

b. Mechanical restraint. (7-1-95)

i. Mechanical restraint may be used for medical purposes when authorized by an attending physician. (7-1-95)

ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the consumer, his targeted service coordinator, his team, and QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.09.143, "Rules Governing the Medical Assistance Program". Informed consumer consent is required. (7-1-95)

c. Physical restraint. (7-1-95)

i. Physical restraint may be used in an isolated emergency to prevent injury to the consumer or others and shall be documented in the consumer's record. (7-1-95)

ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the consumer, his targeted service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.09.143, "Rules Governing the Medical Assistance Program". Informed consumer consent is required. (7-1-95)

d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the consumer, his targeted service coordinator his team, and a QMRP or a behavior consultant/crisis management consultant as qualified in IDAPA 16.03.09.143, "Rules Governing the Medical Assistance Program". Informed consumer consent is required. (7-1-95)

406. -- 499. (RESERVED).

500. WAIVERS.

Pursuant to Section 39-2404, Idaho Code, waivers to these rules, may be granted by the Department as necessary provided that granting the waiver does not endanger the health or safety or rights of any consumer. The decision to grant a waiver shall not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the Department. (7-1-95)

501. -- 999. (RESERVED).

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